



TC05488

Appeal number: TC/2015/06950

*Income tax – application for admission of late appeal – refused –
application for strike out – granted – application for wasted costs - granted*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PRADEEP BAHANDA

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at North Shields on Wednesday 5 October 2016

Mr Razak of Razak & Co for the Appellant

Mr Brooke, Officer of HMRC, for the Respondents

DECISION

Background

1. On 25 July 2012, the respondents (“HMRC”) initiated a compliance check in order to establish the appellant’s correct tax liabilities for the tax year ending 5 April 2011. The self-assessment return for that year had been timeously lodged but had indicated that the appellant had “no income”. The appellant did not respond to that request for information and documents.
2. On 27 September 2012 an Information Notice under Schedule 36 Finance Act 2008 was issued but there was no response by the deadline of 26 October 2012 and a penalty was duly levied. Some information was received on 30 November 2012.
3. HMRC issued a further request for information on 31 January 2013 and no response was received. A further Information Notice under Schedule 36 Finance Act 2008 was issued on 18 April 2013 and eventually the information and documents requested were received on 30 May 2013. Meetings were arranged for 6 November 2013 and 5 June 2014 but the appellant did not attend. Ultimately HMRC met with the appellant’s representative Mr Razak on 2 July 2014.
4. On 6 August 2014 HMRC issued various decisions and the self-assessment inquiry for 2010/11 was closed by the issue of a Closure Notice in terms of Section 28A Taxes Management Act 1970 (“TMA”) and assessments were issued for the years 2008/09 to 2012/13 inclusive in accordance with Section 29 TMA. On 18 August 2014, the appellant’s representative appealed each and all of those assessments on the basis that they were believed to be excessive.
5. On 30 September 2014, HMRC sought further information and documents in support of that appeal but nothing was received and on 11 November 2014 HMRC issued their “View of the matter” letter enquiring whether the appellant wished a statutory review. On 12 December 2014, the appellant’s representative sought a statutory review of the decisions in dispute. Bizarrely, on 9 December 2014, they had contacted HMRC indicating that there had been no correspondence since July 2014. That was instantly rebutted by HMRC pointing out that there had been telephone calls with, and letters from, the appellant’s representative so that simply could not have been the case. The representative then indicated that “we have had problems with our post at this end hence the delay in replying”.
6. On 4 February 2015, HMRC issued the statutory review upholding all of the assessments and intimating the appellant’s rights to appeal to the Tribunal. There was no response.
7. On 23 March 2015, HMRC wrote to the appellant and to his representative stating since there had been no appeal to the Tribunal within the statutory time limit it was assumed that the appeal had been settled by agreement in accordance with Section 49F(2) TMA in the same way as if it was agreed under Section 54(1) TMA.

8. On 30 March 2015, the appellant's representative wrote to HMRC enclosing a copy of a letter dated 2 March 2015 stating that the assessments were not agreed and there would be an appeal to the Tribunal.

5 9. On 16 April 2015, the appellant's representative contacted HMRC. She confirmed that they had written to HMRC on 2 March 2015 indicating that the appellant had intended to appeal to the Tribunal. HMRC stated that no such letter had been received and enquired whether an appeal had been lodged with the Tribunal. The appellant's representative confirmed that they were aware that there was a 30 day
10 time limit for an appeal to the Tribunal. HMRC asked for a return telephone call with confirmation as to whether or not appeals had been lodged or if an application for a late appeal would be lodged. There was no response.

10. On 20 April 2015, the appellant's representative wrote to HMRC referring to previous correspondence and stating "We are now at the stage that this matter will be appealed to the Tribunal and all of the work and effort that involves ... We have had a long and detailed
15 discussion with our client in order to find a reasonable way forward." An offer of settlement in the sum of £10,000 was then made. The outstanding debt without interest was £84,062.08. It was made explicit that the appellant had no funds and would have to borrow to meet liabilities.

11. On 22 April 2015, HMRC again wrote to the appellant's representative pointing
20 out that nothing had been lodged with the Tribunal. That letter erroneously extended a further 30 days for lodgement of an appeal.

12. Nothing further happened until the Notice of Appeal signed by the representative was lodged with the Tribunal on 27 November 2015.

The Notice of Appeal

25 13. That Notice of Appeal was therefore eight months and ten days late. It stated that the appeal was late because "Mr Bahanda was extremely ill and could not issue instructions, he also was unable at that time to provide vital evidence which would have given a different outcome to HMRC assessments. HMRC have now received this evidence but are not willing to stop collection on the assessments or penalties levied."

30 14. In box 5 it stated that the appellant "currently resides with his daughter" and enclosed a doctor's letter dated 23 May 2015.

15. The medical certificate which was addressed to "To whomsoever it may concern" simply stated that the appellant had been diagnosed with Chronic Obstructive Airway Disease (COPD) from July 2008 and that his condition "is deteriorating". It stated the
35 medication prescribed which was at a standard maintenance level for a patient suffering from COPD. In that context the Notice of Appeal indicated that the appellant had difficulty climbing stairs.

The first hearing

16. On 18 February 2016 the parties were notified that the application by the appellant for permission to make a late appeal, to which HMRC objected, had been listed for hearing on Thursday 7 April 2016 at 10.00am and the parties were told that any documents upon which they intended to rely should be sent to the Tribunal and the other party at least 14 days before the hearing. On 22 February 2016 the parties were advised that the start time for the hearing was amended to 10.30am.

17. On 6 April 2016 a Clerk to the Tribunal telephoned the representative to enquire as to who would be attending the hearing. The representative emailed the Tribunal stating:

“Please be advised that we have received urgent notification that Mr Bahanda is still ill in India and is not able to attend the hearing and unable to give us instructions. Therefore we cannot attend this hearing.

We would urgently request that the appeal hearing be rescheduled for May when our client will be able to travel back to the United Kingdom.”

18. The Tribunal issued Directions postponing the hearing set down for 7 April 2016 and directing the appellant to lodge with the Tribunal, with a copy to HMRC, a medical certificate furnishing evidence as to the extent and nature of the incapacity of the appellant. Other case management Directions were also enclosed.

19. HMRC complied timeously with the other case management Directions. The appellant did not. Although directed to furnish dates to avoid for a further case management hearing in May and June 2016 by 13 April 2016, the representative replied on 15 April 2016 offering no dates in May and stating that all dates in June would be available. The only medical certificate provided was a further copy of the original medical certificate enclosed with the Notice of Appeal and it was therefore almost a year out of date. The appellant sought an extension to 29 May 2016 of the time within which to serve details of the authorities on which it was intended to rely and requested that the appeal be heard in June.

20. Directions were issued by the Tribunal extending the time for lodgement to noon on Friday 13 May 2016. Just after noon on 13 May 2016, HMRC emailed both the appellant and the Tribunal seeking confirmation that the appeal had been struck out since the appellant had not complied with directions. At 16:27 that afternoon the appellant’s representative wrote to the Tribunal stating that due to “prior work commitments” they had been unable to comply with the extension of time and sought a further extension of time to 29 May 2016. On 1 June 2016, nothing having been received from the appellant or his representatives, the Tribunal set down a hearing for 30 June 2016.

21. On 7 June 2016 HMRC lodged with the Tribunal and the appellant an application for wasted costs.

Decision on wasted costs

22. Mr Brooke confirmed that he was seeking wasted costs from the appellant only and not from the representative. Mr Razak was wholly unable to offer any explanation as to precisely when the appellant had told him that he would not be able to attend the hearing or indeed any details as to the appellant's alleged infirmity. He could only say that at all times the appellant had told him that he was an ill man.

23. I had due regard to Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") which reads as follows:-

2.—Overriding objective and parties' obligations to co-operate with the Tribunal

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

24. I find that the appellant has certainly not cooperated with the Tribunal. There is no evidence of any particular incidence of ill-health which prevented him giving instructions to Mr Razak. It seems inherently unlikely that he would have arranged to travel from India on 6 April 2016 for a hearing in North Shields on 7 April 2016. His travel arrangements were presumably cancelled before the afternoon of 6 April 2016. It would be expected that if he had had to cancel at the last minute because of ill-health, then he would have needed a medical certificate for insurance purposes. None has been provided.

25. No explanation has been proffered as to why instructions were not given to his representative well in advance of the hearing. Mr Razak said that he did speak to the

appellant by telephone from time to time but the appellant frequently did not answer the telephone.

26. I find that the notification of the requirement to postpone the hearing could and should have been made significantly earlier than the afternoon of 6 April 2016. Had that been done HMRC's representative would not have incurred the cost of travel to Newcastle nor the cost of accommodation and subsistence. In those circumstances I find that the appellant has acted wholly unreasonably and I therefore make an Order in terms of Rule 10 of the Rules and that in the sum sought by HMRC.

Application to extend the time limit for lodging an appeal

27. As can be seen from the background to this appeal as set out above the appellant and his representative were certainly well aware of the 30 day time limit for making an appeal. Each of the assessments had been appealed to HMRC within that 30 day time limit. HMRC had drawn the attention of the appellant's representative to the time limit on more than one occasion yet nothing was done until November 2015.

28. In the course of this hearing Mr Razak confirmed that the appeal was lodged when HMRC were taking steps to enforce the assessments. It seemed from Mr Razak's explanation that a conscious decision was made not to appeal within the statutory time limit on the basis that no information was apparently available to found an appeal and that he did not have instructions. Nevertheless he did have "detailed" instructions as long ago as April 2015 (see paragraph 10 above).

29. I had drawn the appellant's attention to the recent case of *BPP Holdings v HMRC* 2016 EWCA Civ 121 which confirmed that *Data Select v HMRC* 2012 STC 2195 was still binding.

30. At paragraph 34 of *Data Select* the Upper Tribunal stated:-

"As a general rule, when a Court or Tribunal is asked to extend a relevant time limit, the Court or Tribunal asks itself the following questions:

- (1) What is the purpose of the time limit?
- (2) How long was the delay?
- (3) Is there a good explanation for the delay?
- (4) What will be the consequences for the parties of an extension of time?
- (5) What will be the consequences for the parties of a refusal to extend time?"

31. I have looked at all five of those criteria. My starting point is that a failure to meet a deadline set by Parliament is always a serious and significant matter but it is also Parliament that has given the Tribunal discretion to allow such a case to proceed. Time bar provisions are created for a reason and that is that they provide finality and certainty and it is not in the interests of justice to permit appeals after long periods of delay. There is a public interest in the finality of decisions of HMRC.

32. I am bound by and entirely agree with Judges Berner and Falk at paragraph 96 of *Romasave (Property Services) Ltd v HMRC* (“*Romasave*”)¹ which reads:-

5 “... The exercise of a discretion to allow a late appeal is a matter of material import, since it gives the Tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant.”

10 33. The delay in this appeal is not a simple matter of days (which was the case in the appellant’s request for the statutory review). The appeal was only lodged when enforcement action was taken by HMRC. It is therefore a very long delay.

15 34. I do not consider that there is a good explanation for the delay. In fact the explanation in the Notice of Appeal to the effect that the appellant was “extremely ill” has never been vouched and surely could not have been the case throughout the period. Although the Notice of Appeal indicated that he was living with his daughter it now appears that he was in fact in India. I do not find that there was a good reason for the delay and the delay is far in excess of the three months in *Romasave*.

20 35. Clearly the consequences for the appellant are significant if the application is not granted since he will be unable to litigate the point. In the recent Supreme Court judgment of *Global Torch Ltd v Apex Global Management Ltd (No 2)* Lord Neuberger said at [29] and [30] that the strength of a party’s case on the ultimate merits of the proceedings is generally irrelevant when it comes to considering whether time should be extended unless the party concerned has a case whose strength would entitle him to summary judgement. That is patently not the case here. The schedules 25 lodged are those compiled by HMRC with the appellant’s comments added. HMRC argue that it changes nothing.

36. Further, on the other hand, as can be seen above this whole matter has been in dispute since 2012 and the appellant’s cooperation with HMRC has been negligible.

30 37. If the application is granted then there will be considerable cost to the public purse and in the interim there will have been a loss of institutional memory.

38. Every application for admission of a late appeal depends on its own facts and circumstances. At all stages in the consideration of this matter I have had Rule 2 of the Rules very much in mind.

35 39. For the avoidance of doubt I have considered, and weighed in the balance, all of the relevant circumstances including, but not restricted to, the circumstances outlined in *Data Select*. In so doing I concurrently applied the three stage process set out by the Court of Appeal in *Denton & Others* 2013 UKUT 01619 (TCC). Taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs. Patently, even allowing for ill-health, Mr Bahanda has not. It would have been 40 prudent to have appealed the issue of the assessments. Notwithstanding the

¹ 2015 UKUT 254

prompting from HMRC no action was taken to do so until the tax was in process of collection.

5 40. On the balance of probability I find that the appellant has not discharged the onus of proof in establishing good reason for extending the time limit in the circumstances of this case.

10 41. If I am wrong in that I therefore need to consider HMRC's application for strike out. The appellant has repeatedly been put on notice that failure to comply with Directions of the Tribunal will result in the strike out of the appeal. The appellant has persistently and consistently failed to comply with Directions, until after the reinstatement of the appeal in August 2016. For that reason I strike out the appeal.

15 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.

20 **ANNE SCOTT**
TRIBUNAL JUDGE

RELEASE DATE: 15 NOVEMBER 2016