[2019] UKFTT 687 (TC)

TC07460

Appeal number: TC/2014/03863

PROCEDURE – application for reinstatement – application dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Mr BALJIT SINGH RAI **Appellant**

- and -

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

TRIBUNAL: JUDGE JANE BAILEY

Sitting in public at Centre City Tower, Birmingham on 3 October 2019

Mr Vaghela, accountant, for the Appellant

Mr Wilson, presenting officer, for the Respondents

DECISION

Introduction

1. The application before me is an application for the reinstatement of an appeal which was withdrawn shortly before the substantive hearing.

Chronology of this appeal

2. There was no dispute between the parties as to the chronology of this appeal. Both agreed that matters had been ongoing for a number of years, and that the dispute arose from a 2008 HMRC investigation which concluded that the Appellant had failed to register for VAT when he crossed the VAT registration threshold in 2003.

3. On 15 July 2014, the Tribunal received an appeal filed by Vaghela & Co. on behalf of the Appellant. The basis of that appeal was that a VAT return submitted in January 2014 by the Appellant for the period 11/03 to 12/08 should have been accepted by HMRC. That return showed net VAT due of £44,667.32. The relevant HMRC decision attached to the Notice of Appeal was a statutory review, dated 18 June 2014, upholding an earlier decision to refuse to accept this return (treated as an error correction claim) in place of a 22 November 2011 assessment to VAT in the sum of £98,891.91 for the same period. In his Notice of Appeal the Appellant also referred to an earlier assessment for the same period, in the sum of £143,832, which had been replaced by the November 2011 assessment.

4. In August 2014, HMRC informed the Tribunal that hardship was not engaged. An application for a stay to enable ADR discussions to take place was granted by the Tribunal on 27 November 2014.

5. In March 2015, as ADR discussions had broken down, HMRC applied to the Tribunal for better particulars of the Appellant's claim. No response was received from the Appellant. HMRC's request was repeated in June 2015. On 10 July 2015, Vaghela & Co. confirmed that the Appellant also wished to submit late appeals against adjustments to self assessments, and an assessment to VAT. HMRC objected to the lateness of such appeals, and noted that relevant adjustments to the Appellant's self assessments had been made by HMRC in 2007, and those adjustments had been agreed by the Appellant's previous agent in February 2010. An appeal against a compulsory registration to VAT had been dismissed by the Tribunal on 25 September 2009 (reported at [2009] UKFTT 245), and an assessment to VAT was raised on 16 November 2009. This assessment was subsequently replaced by the 22 November 2011 assessment.

6. As the Appellant's appeal was in respect of VAT only, in light of the Appellant's clarified grounds of appeal, on 17 August 2015, the Tribunal invited the Appellant to submit an income tax appeal. Upon receipt of this new appeal, in September 2015, the Tribunal listed a preliminary hearing of both appeals to determine whether the Appellant should be given leave to appeal out of time against the adjustments to the self assessments and the assessment to VAT.

7. Following an oral hearing on 16 November 2015, on 10 December 2015, the Tribunal issued a summary decision refusing the Appellant permission to appeal out of time against either the VAT assessment or the adjustments to the self assessments. The Appellant subsequently made an out of time request for a full decision. This was issued on 16 March 2016 (and reported at [2016] UKFTT 184).

8. As the Appellant's appeal against HMRC's refusal to accept the January 2014 VAT return as an error correction for the period 11/03 to 12/08 was unaffected, on 10 December 2015, the Tribunal (acting on judicial instruction) directed the Appellant to file clarified grounds of appeal. On 29 January 2016, the Tribunal received those grounds of appeal from the Appellant. The basis of the Appellant's case was that his figures, set out in the return, were to be preferred to the figures used by HMRC when raising the 2011 assessment. As part of his grounds of appeal, the Appellant revised the figures in his January 2014 return so that the net VAT due to HMRC was increased to £51,480.

9. On 13 April 2016, HMRC filed their Statement of Case. HMRC's case was that the 2014 VAT return had been treated as an error correction on the basis that new information was said to be available. Once investigated, HMRC took the view that no new information had, in fact, been provided and that the points made by the Appellant had already been taken into account in raising the 2011 assessment. Consequently, no changes would be made to the 22 November 2011 assessment.

10. On 4 May 2016, the Tribunal issued case management Directions to both parties. Both parties filed their list of documents in accordance with those Directions (albeit a few days late in the Appellant's case). HMRC also filed their witness evidence as directed.

11. On 24 June 2016, Vaghela & Co. asked for an extension of unspecified length to provide the Appellant's witness evidence on the basis that, at the end of May 2016, the Appellant had been convicted of a criminal offence and sentenced to five years imprisonment. In response to Tribunal's enquiries, on 8 August 2016, Vaghela & Co. confirmed that the Appellant wished to continue with his appeal, and a three month extension of time was sought to provide the Appellant's witness evidence. HMRC did not object. The Tribunal granted the Appellant an extension of time until 8 November 2016 to provide both his witness evidence and his proposals for how the hearing should proceed given his imprisonment.

12. On 8 November 2016, the Appellant's unsigned witness statement was filed with the Tribunal. No other witness evidence was filed on behalf of the Appellant.

13. After being chased by the Tribunal, on 12 December 2016, Vaghela & Co. proposed to the Tribunal that the substantive hearing of the appeal should be postponed until after the Appellant was released from prison. HMRC objected to such a long delay. In March 2017, the Tribunal (acting on judicial instruction) enquired of Vaghela & Co. whether an application had been made, or would be made, to the prison for the Appellant's hearing attendance during his sentence. Vaghela & Co. replied to confirm that an application would be made and that they would update the Tribunal once a reply had been received.

14. In May 2017, in the absence of an update from the Appellant, the Tribunal decided to list an oral hearing of the Appellant's 12 December 2016 application for a stay. Both parties provided the Tribunal with details of their unavailable dates and the hearing was listed for 14 July 2017.

15. Although the 14 July 2017 hearing was a case management hearing, and Vaghela & Co. had previously stated that, if given 14 days' notice, they could apply to the prison for the Appellant to be allowed to attend, on 5 June 2017, Vaghela & Co. applied for a postponement on this hearing on the basis that the Appellant would not be allowed out of prison until after 31 August 2017 and so could not attend the case management hearing. HMRC did not object. The Tribunal cancelled the 14 July 2017 hearing.

16. The case management hearing was re-listed for 26 October 2017. Vaghela & Co. again sought a postponement, this time on the basis that the Appellant would not be allowed out of prison until 26 May 2018, and the appeal could not be argued in his absence. In response, HMRC noted that a May 2018 release was earlier than originally suggested and so withdrew their objection to the Appellant's 12 December 2016 stay application.

17. The Tribunal cancelled the 26 October 2017 case management hearing and asked the parties for their dates to avoid for a hearing from June 2018. Both parties provided their dates to avoid and the Tribunal listed a further hearing on 18 June 2018. This hearing was described as being a hearing of the Appellant's 12 December 2016 stay application, even though this was no longer opposed by HMRC.

18. On 16 May 2018, HMRC wrote to the Tribunal to seek clarification of the nature of the hearing. The Tribunal (acting on judicial instruction) cancelled the 18 June 2018 hearing, and asked Vaghela & Co. to confirm that the Appellant had been released. Vaghela & Co. confirmed that the Appellant was allowed home for one weekend every fortnight, and that he would be released at the end of November 2018.

19. The Tribunal listed a two hour hearing on 5 March 2019. This was again described as being a hearing of the Appellant's 12 December 2016 stay application. HMRC again wrote to the Tribunal for clarification of the nature of the hearing.

20. On 25 September 2019, both parties were informed by the Tribunal that the substantive hearing of the Appellant's appeal had been listed for a full day hearing on Tuesday, 5 March 2019.

21. On or about 26 November 2018, the Appellant was released from prison.

22. On 14 February 2019, HMRC filed and served their skeleton argument. This was in accordance with the case management Directions requiring both parties to file and serve a skeleton argument no later than 14 days before the hearing date, i.e. no later than 5 p.m. on 19 February 2019.

23. At 6:18 p.m. on 15 February 2019, Vaghela & Co. emailed the Tribunal withdrawing the appeal.

24. On 18 February 2019, a copy of the Appellant's email was forwarded to HMRC by the Tribunal. On the same date both parties were informed by the Tribunal that the hearing on 5 March 2019 had been cancelled.

25. At 4:44 p.m. on 4 March 2019, Vaghela & Co. emailed the Tribunal to state that the Appellant wished to reinstate his appeal. No reasons were provided. It was suggested that Mr Vaghela and the Appellant would both attend the hearing venue on the next day. As must have been obvious to Mr Vaghela, the Tribunal was unable to convene a hearing on 16 minutes notice. The substantive hearing did not take place on 5 March 2019.

26. On 5 March 2019, HMRC emailed the Tribunal and Vaghela & Co, setting out HMRC's objection to the Appellant's application to reinstate the appeal. HMRC noted that no grounds for reinstatement had been provided, that there had already been considerable delay and that the Appellant had had ample time to decide whether to pursue the appeal and also to provide a skeleton argument.

27. On 19 March 2019, Vaghela & Co, wrote again to the Tribunal, with what was described as a formal application to have the appeal reinstated. The Appellant's grounds for seeking reinstatement were set out in this letter. On 19 March 2019, Vaghela & Co. also responded to HMRC's objection, suggesting that the prison sentence and other delays were outside the Appellant's control, that the Appellant intended to instruct a VAT lawyer or expert to argue his appeal, and that the expert would prepare a full skeleton argument in advance of the substantive appeal hearing.

28. In April 2019, the Appellant confirmed to the Tribunal that he wished to have an oral hearing of his application for reinstatement. The Tribunal subsequently listed that application for hearing on 3 October 2019.

Evidence before the Tribunal at the hearing on 3 October 2019

29. In addition to the documents on the Tribunal file, HMRC had prepared a bundle consisting of:

- documents relating to the 2008 enquiry into the Appellant which had led to the self assessment adjustments and VAT assessment,
- correspondence from the Appellant's former agents agreeing the adjustments, and from HMRC explaining how they had arrived at their figures and what had been taken into account;
- the 2009 and 2015 reported decisions, and the 2015 Notice of Appeal; and

- authorities on which they relied.

30. The Appellant had not prepared a bundle but he did provide an unsigned one page witness statement (disclosed to HMRC on the morning of the hearing), and he gave oral evidence (through a court appointed interpreter) and was cross examined.

Relevant test to be applied in considering an application to reinstate

31. Appearing on behalf of the Appellant, Mr Vaghela did not refer me to any legislation, case-law or Tribunal rules in making his application, and he made no reference to the test he considered the Tribunal should apply.

32. In his comprehensive submissions on behalf of HMRC, Mr Wilson referred to *Maltavini Limited v HMRC* [2016] UKFTT 267, a decision of Judge Mosedale concerning reinstatement after a failure to comply with an unless order. In her decision, Judge Mosedale drew parallels with the position if there had been an unprompted withdrawal by the Appellant, and referred to *Pierhead Purchasing Limited v HMRC* [2014] UKUT 321 where Proudman J. had set out five factors which the Tribunal should take into account when considering reinstatement.

33. I agree with Judge Mosedale that there are useful parallels which can be drawn between an unprompted and a prompted withdrawal, and I also agree that the first four of those five factors are ones which a Tribunal is likely to have to take into account; I comment on the fifth factor below. These first four factors are:

- The reasons given by the Appellant for the withdrawal and the reasons given for the application for reinstatement;
- Whether HMRC would be prejudiced by reinstatement and, if so, the extent of that prejudice;
- Whether the Appellant would be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice; and
- Whether reinstating this appeal would be prejudicial to the interests of good administration.

34. The fifth factor mentioned in *Pierhead* is:

- The merits of the proposed appeal so far as they can conveniently and proportionately be ascertained.

35. The merits of the proposed appeal are generally not relevant to a case management decision; and it seems to me that a decision in respect of a reinstatement application is a case management decision. I reach this conclusion because, although an applicant in a reinstatement application requires permission from the tribunal to proceed, which is similar to an application to make a late appeal, with a reinstatement application there was once a valid appeal over which the tribunal had jurisdiction. I consider that the prior existence of an appeal distinguishes a reinstatement application from an application to make a late appeal in which the tribunal is considering whether

to accept jurisdiction at all. I agree that when considering whether to accept jurisdiction over a new appeal or fresh ground of appeal then the merits of that proposed new appeal or new ground of appeal are relevant (see *Martland v HMRC* [2018] UKUT 178 and *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm)). However, when case-managing an appeal over which the court or tribunal already has jurisdiction, I consider the merits of the appeal are not relevant.

36. In *Chappell v The Pension Regulator* [2019] UKUT 209, the Upper Tribunal (Judge Timothy Herrington) considered the reinstatement of an application which had been struck out for failure to comply with an unless order. At paragraph 86 it was said:

> 86. In my view when considering a reinstatement application which is made following the making of an unless order, the Upper Tribunal should, consistently with what was said by the Supreme Court in *Global Torch*, generally take no account of the strength of the applicant's case. It is helpful to set out in more detail what Lord Neuburger said at [29] of the judgment in that case:
>
> > In my view, the strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues of the sort which were the subject of the decisions of Vos, Norris and Mann JJ in these proceedings. The one possible exception could be where a party has a case whose strength would entitle him to summary judgment….

37. As the Upper Tribunal explained, with further reference to *HRH Prince Addulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Limited* [2014] UKSC 64 (*"Global Torch")*, the general principle is that the merits of a party's case are not taken into account when a tribunal or court makes a case management decision. The exception, noted by Lord Neuberger, is where an applicant's case is so weak that the other party would succeed in summary judgment. The Upper Tribunal considered the analogous test in the Upper Tribunal was an application to strike out on the basis that there was no prospect of the applicant's case succeeding. In *Chappell*, Judge Timothy Herrington concluded:

> 94. It follows from what I have said that I should not take account of the merits of the case to the extent laid down by Proudman J in *Pierhead Purchasing*. In that context, I observe that *Global Torch* was decided after *Pierhead Purchasing* and as it is a judgment of the Supreme Court I am of course bound to follow it, again applying the principle that the tribunals should adopt by analogy the approach taken in the courts to matters of this kind.

38. I accept that *Chappell* concerned reinstatement after being struck out, and that I am concerned with reinstatement after an unprompted withdrawal, but I do not consider that an applicant who has not breached an unless order should face a stricter test than an applicant who has breached Tribunal directions. Therefore, I consider I should only take into account the merits of the Appellant's appeal if I conclude that those merits are so weak that HMRC would succeed in striking out the appeal.

Is the Appellant's case so weak that it is a relevant factor?

39. Therefore, I must decide if the Appellant's case is so weak that HMRC would have been successful if they had brought an application to have it struck out as having no reasonable prospects of success.

40. For the Appellant to be successful in his appeal, he must demonstrate that the figures used by HMRC to raise a VAT assessment are incorrect and that his own figures are to be preferred. That would reduce the tax due from about £99,000 to about £52,000. HMRC's figures are based upon figures agreed with the Appellant's previous advisors following a self assessment enquiry. The Appellant does not accept that those figures are correct but, as Mr Vaghela accepted before the Tribunal in 2015 and accepted again before me, the Appellant has no evidence at all to support his own figures. The relevant period is 2003 to 2008, more than a decade ago. Mr Vaghela accepted that the likelihood of the Appellant now finding evidence which he had not previously uncovered was low. Mr Vaghela suggested that the Appellant's chances of success at a substantive hearing were "at best, 50:50". I consider that prognosis to be wildly optimistic.

41. In defending the reinstatement application, Mr Wilson argued that the appeal had very little chance of success and was very weak. I agree with Mr Wilson that the Appellant's case is weak. But, that does not mean that I consider it is impossible for the Appellant to succeed, at least in part, in a substantive appeal. I do not consider it is inevitable that HMRC would be successful if they made an application to strike out this appeal because it had no reasonable prospects of success. Indeed, HMRC had not made an application to have the Appellant's case struck out. Until the appeal was withdrawn, HMRC were preparing to defend their decision at a fully argued substantive hearing.

42. Therefore, while I agree with Mr Wilson that the Appellant's case is weak, I do not agree that the Appellant's case it is so weak that I should, following *Global Torch* and *Chappell,* take the merits of the appeal into account when deciding whether to reinstate this appeal.

The matters which are relevant, to be taken into account in deciding this application

43. So, in making my decision I will take into account:

- The reasons given by the Appellant for the withdrawal and the reasons given for the application for reinstatement;
- Whether HMRC would be prejudiced by reinstatement and, if so, the extent of that prejudice;
- Whether the Appellant would be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice; and
- Whether reinstating this appeal would be prejudicial to the interests of good administration.

44. It is important that I also have in mind the over-riding objective of the Tribunal Rules to deal with cases fairly and justly, and that I take into account any specific factors which are relevant to the application before me.

Appling that test to the facts of this case

45. I look first at the four factors which I should take into account, before weighing those factors in light of the over-riding objective.

The reasons for withdrawal, and the reasons for seeking reinstatement

46. The letter of withdrawal, sent by Mr Vaghela at 6:18 p.m. on 15 February 2019, stated as follows:

> We refer to your letter of 25 September 2018 in the above matter.
>
> On reflection, Mr B S Rai has decided to withdraw his Appeal against H M Revenue & Customs' Vat and Income Tax Assessments.
>
> Accordingly, we hereby withdraw our client's Appeal against the outstanding Vat and Income Tax Assessments.
>
> Please note our client or us will not be present at the forthcoming Hearing of those Assessments.

47. Although that letter confuses what the forthcoming hearing was to determine[1], this letter suggests that the withdrawal was a considered decision. The Appellant's failure to begin preparation of a skeleton argument before 15 February 2019 is also consistent with the notion that the Appellant was considering withdrawal in the days before 15 February 2019, and that the withdrawal had followed a period of "reflection". (That there had been a failure to prepare a skeleton argument was implicitly accepted by Mr Vaghela when he responded to HMRC's objections to suggest that a skeleton argument would be prepared before a subsequent hearing.)

48. The application for reinstatement was made to the Tribunal at 4:44 p.m. on 4 March 2019. In this letter, Mr Vaghela wrote:

> Further to out letter of 15 February 2019, we write to advise Mr B S Rai wishes to reinstate his Vat and Income Tax Appeals at the above hearing tomorrow.
>
> Accordingly, please note Mr B S Rai and us will attend tomorrow's meeting. We trust the Tribunal will accede to our request.

49. On 19 March 2019, following HMRC's objection to reinstatement sent to the Tribunal and the Appellant on 5 March 2019, Mr Vaghela set out the Appellant's explanation for withdrawing the appeal:

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[1] As is clear from the chronology of this appeal, the substantive dispute listed did not include appeals against adjustment to self assessments or against a VAT assessment. The only matter in dispute was HMRC's refusal to accept the January 2014 VAT return figures as an error clarification.

> The appeal was withdrawn on 15 February 2019, without the benefit of legal advice by our client and on the spur of the moment without considering the consequences of withdrawal. Since serving his prison sentence, our client has been very irrational in his thinking and gets very moody and upset over little things in life.

50. Pausing there, in his witness statement to support the reinstatement application the Appellant described his decision to withdraw as "hasty", and said that the decision to withdraw was made:

> … spontaneously on a day I was not feeling well due to my recent imprisonment, which has left very serious scars on my mind. Since then, my mind changes on a day to day basis, especially, if I am not working or under any pressure or tension.

51. I note that a hasty or spontaneous withdrawal is inconsistent with the letter of withdrawal and also inconsistent with the Appellant's failure to begin preparation of a skeleton argument to be filed no later than 19 February 2019.

52. In his oral evidence the Appellant told the Tribunal that his health was "not good" on 15 February 2019 (when he withdrew his appeal) but that his health on 4 March 2019 (when he made his reinstatement application), less than three weeks later, was "fine". Mr Vaghela submitted that the Appellant had been anxious about talking to people and answering questions when he gave the instruction to withdraw the appeal, but this submission was not supported by the Appellant's witness evidence.

53. The onus is upon the Appellant to demonstrate the matters on which he relies. He is represented by an experienced agent who knows, or should know, that is the position. No medical evidence was produced to support the Appellant's witness evidence that he was unwell after leaving prison and that his thinking was irrational in the period up to 15 February 2019. As Judge Mosedale explained in *Banerjee v HMRC* [2015] UKFTT 0085 (TC), medical evidence is required due to the difficulties for a non-medically trained person in appreciating the severity of his or her own illness and how this affects his or her capacity.

54. In the absence of any medical evidence, it is very difficult for me to understand the extent of the Appellant's ill health or how any illness from which he might have been suffering might have affected him in the period after he left prison. I was not told whether the Appellant had visited a doctor to discuss feeling unwell, so I do not even know whether the Appellant has been formally diagnosed as suffering from an illness or whether he has self-diagnosed.

55. In the absence of medical evidence, I am not persuaded that the Appellant was so unwell in the period between his release from prison on 26 November 2018, and the withdrawal on 15 February 2019, that he was unable to make rational decisions about his tax appeal. I do not accept that the Appellant's decision to withdraw his appeal was affected by his health.

56. Returning to the text of the letter of 19 March 2019, Mr Vaghela continued:

Our client has since taken legal advice and understands that if he does not pay the sum of £143,832 vat debt he could be made Bankrupt and stands to lose his family residence.

> As it stands, our client is unemployed and has no means to raise the disputed vat debt to pay off H M Revenue and Customs.
>
> Our client has never accepted that he owes the disputed vat debt and hence, the Appeal against the H M Revenue and Customs vat assessment in 2014 in the first place.
>
> Our client has therefore changed his mind about the Appeal and wants to reinstate it to fight his corner and take a chance with the Tribunal as he believes he has already suffered enough, which includes serving prison sentence, at the hands of H M Revenue & Customs. Mr B S Rai wants to satisfy himself that he did everything he could to settle this matter once and for all.

57. I accept that, having made the decision to withdraw, the Appellant subsequently changed his mind.

58. I find that the reason for this change of mind was, as stated, that the Appellant realised after the withdrawal that, because he did not have the funds to pay the VAT due under HMRC's VAT assessment, he was likely to be declared bankrupt and to lose his family home. I infer that the Appellant did not appreciate those consequences prior to his withdrawal, and that lack of understanding influenced his decision to withdraw.

Would the Appellant be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice

59. Mr Vaghela submitted that if the appeal was not reinstated then the Appellant was likely to be declared bankrupt and to lose his family home. Mr Vaghela argued that it was when the Appellant realised this was the case, that he applied for reinstatement.

60. It is unclear if, in March 2019, the Appellant had appreciated what became clear at the hearing before me, namely that if the appeal was reinstated and the Appellant was to be wholly successful in that appeal, then he would, on his own figures, owe £51,480 of VAT to HMRC. Mr Vaghela accepted that the Appellant cannot afford to pay that amount, or indeed any amount, to HMRC. Therefore, whatever the outcome of this application and any substantive appeal, the Appellant is overwhelmingly likely to be made bankrupt and to lose his family home.

61. Mr Vaghela also submitted that if I refuse to reinstate this appeal, then the Appellant would lose faith in the justice system. I can appreciate that the Appellant would be disappointed by a decision not to reinstate but I consider it likely that the Appellant would understand that a refusal to reinstate was a consequence which flowed from his own decision to withdraw, just as the Tribunal's earlier decision not to admit his late appeals was a consequence which flowed from his failure to make timeous appeals.

62. I conclude that if the appeal is not reinstated then the Appellant would be prejudiced in losing the opportunity to reduce the debt owed to HMRC from £98,891

to £51,480. However, this is relatively limited prejudice given the same consequence will flow however much in the range of £51,480 to £98,981.91 is ultimately found to be due from the Appellant.

Would HMRC be prejudiced by reinstatement and, if so, the extent of that prejudice

63. If this appeal was to be reinstated then HMRC would have to bear the expense of a substantive hearing. As they have already prepared for a substantive hearing once, some of those expenses would be incurred a second time. Therefore, HMRC would bear additional expenses which would not have been incurred had the hearing gone ahead on 5 March 2019. It is possible that witness recollections will further diminish due to the additional delay between 5 March 2019 and any future substantive hearing.

64. The reinstatement of this appeal would also delay the point at which HMRC could recover the amount which the Appellant owes. Even if the Appellant is successful in his appeal, £51,480 is due from him. However, HMRC have not been able to take enforcement action pending the outcome of this appeal.

65. I conclude that there is prejudice to HMRC if the appeal is reinstated, and that this outweighs the prejudice to the Appellant if the appeal is not reinstated.

Would reinstating this appeal be prejudicial to the interests of good administration

66. As can be seen from the chronology, this appeal has already been on-going for a number of years. Some of that delay has been occasioned by the Tribunal itself but the Appellant is also responsible for some of that delay. I do not agree with Vaghela & Co.'s suggestion that the Appellant was not responsible for the length of time he spent in prison; the Appellant's sentence was a direct consequence of the crime committed by the Appellant. Limited effort appears to have been devoted to investigating the options for the Appellant to attend a hearing while still in prison. Further delay has been occasioned by the Appellant's decision to withdraw, and then apply for reinstatement. However, although there have been delays which are attributable to the Appellant, it seems to me that, in the context of an application for reinstatement after an unprompted withdrawal, that the Appellant's previous delay should not weigh too heavily against him. Although the Appellant has been slow in meeting Tribunal deadlines and in responding, and did not appear ready to proceed on 5 March 2019, the Appellant has not been in breach of Tribunal directions.

67. More relevantly, if the appeal was to be reinstated there are no guarantees that it would run smoothly or that a substantive hearing could be listed soon. The Appellant did not appear ready for the hearing on 5 March 2019, and he now proposes, at this very late stage, to instruct a VAT expert or lawyer. As the Appellant has yet to instruct that expert, it is likely that the Appellant will ask for time to give that instruction before a substantive hearing can take place. As a result of that instruction, the Appellant may wish to revise his grounds of appeal or call additional witnesses. This will delay the substantive hearing of any reinstated appeal.

68. I also bear in mind that Tribunal resources are limited. At paragraph 17 of the Court of Appeal's decision in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, the court quoted with approval the earlier comments of Master McCloud:

> Judicial time is thinly spread, and the emphasis must, if I understand the Jackson reforms correctly, be upon allocating a fair share of time to all as far as possible and requiring strict compliance with rules and orders even if that means that justice can be done in the majority of cases but not all.

69. Good administration requires the proportionate use of public resources, and those resources include Tribunal time as well as HMRC funds. Mr Vaghela submitted that, if he did not have a substantive hearing, the Appellant would feel as though he had not done everything he could to argue his case. I appreciate that might well be how the Appellant views the position. However, the Appellant had one opportunity to have a substantive hearing, which he gave up, and he has had the benefit of an oral hearing to make his case for having a second opportunity.

70. I have concluded that reinstating this appeal would be prejudicial to the interests of good administration.

Weighing those factors in light of the over-riding objective

71. The over-riding objective requires me to deal with matters fairly and justly. In the context of this application that includes:

- Dealing with matters 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;

- Seeking flexibility and ensuring, so far as practical, that parties are able to participate fully; and

- Avoiding delay so far as compatible with proper consideration of the issues.

72. The second of those factors weighs in favour of the Appellant. If the appeal was reinstated then the Appellant would have the substantive hearing he seeks in order, as Mr Vaghela put it, to feel he "did everything he could to settle this matter once and for all". However, the other two factors weigh against reinstatement. The appeal is important to the Appellant but it is not a complex matter or one which will affect other appeals. Reinstatement of the appeal would involve both parties incurring further costs, and neither party has limitless resources. As the ultimate outcome for the Appellant will be the same, for public funds to be incurred again in preparing for another substantive hearing does not seem proportionate to the relatively limited benefit to the Appellant which reinstatement might achieve.

Conclusion

73. In weighing all of these factors I have taken into account the disappointment which the Appellant will feel if I do not reinstate this appeal, and the extent of the

consequences which he may feel will have resulted from his decision to withdraw. However, the decision to withdraw was apparently made because the Appellant did not appreciate, at that time, that he would be made bankrupt if he withdrew. Having taken advice between 15 February and 4 March 2019, the Appellant appreciated the consequences of having withdrawn and so sought reinstatement. The Appellant could have taken advice on the consequences of withdrawal before he made his decision. The Appellant was only under pressure to withdraw on 15 February 2019 because his skeleton argument was due no later than 19 February 2019, and he had apparently not yet begun his preparation of that document. The reason for seeking reinstatement is a change of mind in light of a better understanding of the consequences of withdrawal. But, as I have noted, there was no reason why the Appellant could not seek out a better understanding of the consequences before he withdrew his appeal.

74. I do not dismiss the distress which the Appellant will suffer at bankruptcy and in losing his family home. However, as became clear at the hearing before me, on his own figures the Appellant owes £51,480 to HMRC. There is no more prospect of the Appellant paying this amount than the £98,891.91 due under the assessment. Therefore, it is almost inevitable that the Appellant will be made bankrupt, whatever the outcome of this application. On that basis there is relatively limited prejudice to the Appellant in refusing reinstatement. There is greater prejudice to HMRC in re-incurring the costs of preparing for a substantive hearing if the appeal is reinstated.

75. I have concluded that it would be prejudicial to good administration for the appeal to be reinstated. If the appeal is reinstated there are likely to be delays before a substantive hearing can be re-listed, not least because the Appellant has yet to instruct the VAT expert or lawyer he has decided he wishes to instruct and has yet to prepare his skeleton argument for a substantive hearing. Tribunal time is thinly spread and I do not consider it would be a good use of the limited public resources available to the Tribunal for me to reinstate this appeal.

76. I have decided that this application should be dismissed.

77. 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.

JANE BAILEY

TRIBUNAL JUDGE

RELEASE DATE: 12 NOVEMBER 2019