



TC07906

Schedule 36 FA 2008 information notice- whether appellant required to produce the documents listed – yes if within his possession or power – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/05713

BETWEEN

UMESH GADHAVI

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE TRACEY BOWLER

Sitting in public at Taylor House on 15 January 2020

The Appellant appeared as a litigant in person

Ms Jane Chris-Tagoe, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. A summary decision was issued on 4 February 2020. Mr Gadhavi wrote to the Tribunal on 3 March 2020 seeking to appeal the decision. There has been delay in processing that letter as a result of the processes put in place to deal with the Covid-19 pandemic. This is the full decision explaining not only the reasons why Mr Gadhavi's appeal was dismissed, but also that there is no right of appeal against this decision.

2. HMRC carried out an investigation into the tax return of a company wholly owned by Mr Gadhavi. In the course of the investigation HMRC saw that Mr Gadhavi had received payments of more than £120,000 into his bank account which did not come from his wholly owned company. HMRC started an investigation into Mr Gadhavi's tax affairs. He was asked to provide personal and company bank statements for a period in 2014 to 2015 with an explanation of the entries. He did so, although it took him a long time to provide the requested information. HMRC then commenced an enquiry into Mr Gadhavi's tax return for the tax year 2016-17 and issued the information notice which is the subject of the appeal before me. In that notice Mr Gadhavi is asked to produce specified bank statements. Mr Gadhavi objects on the basis that he had previously provided all requested documents, explanations and a detailed transactional analysis and he did not want to be required to carry out the arduous task of analysing more bank statements.

APPEAL BACKGROUND

3. On 14 December 2018 HMRC opened an enquiry into Mr Gadhavi's tax return for the tax year 2016-17. An officer of HMRC, Officer Brown, wrote a letter which was sent by email to Mr Gadhavi on that day informing him of the enquiry.

4. On the same day Officer Brown issued a notice under paragraph 1 of Schedule 36 to the Finance Act 2008 ("Schedule 36") asking for specified bank and credit card statements to be provided by 15 January 2019 ("the Notice").

5. On 4 February 2019 Mr Gadhavi made a late appeal against the Notice.

6. On 11 February 2019 HMRC accepted the late appeal and sent a response to Mr Gadhavi.

7. On 13 March 2019 in a phone call with HMRC Mr Gadhavi asked for two more weeks to "sort things out". HMRC granted him a further 30 days to comply with the Notice.

8. On 15 March 2019 HMRC wrote a letter to Mr Gadhavi offering a review.

9. On 17 April 2019 HMRC issued an initial penalty notice to Mr Gadhavi by email and post. Later that day, Mr Gadhavi wrote an email asking HMRC for a review. The penalty was stood over and the review was carried out.

10. On 12 July 2019 the review upheld the Notice.

11. On 27 August 2019 Mr Gadhavi submitted his notice of appeal to the Tribunal.

PRELIMINARY ISSUE – APPLICATION FOR ADJOURNMENT BY MR GADHAVI

12. Mr Gadhavi had contacted the Tribunal on the day before the hearing and had asked for a postponement because:

- (1) he had only received HMRC's bundle on 9 January 2020 because he had moved address and he had not had time to work through it; and
- (2) he wished to find a representative.

13. Judge Brooks had refused the application on 14 January 2020 on the basis that it was for Mr Gadhavi to notify a change of address and he had not done so; and he had had ample time to find a representative.

14. At the start of the hearing Mr Gadhavi applied for an adjournment for the same reasons as he had applied for a postponement. HMRC opposed the application on the basis that: (1) the bundle had been sent out on 19 December 2019; and (2) Mr Gadhavi had had ample time to apply for an adjournment, but had left it until the last moment on the day before the hearing.

15. I refused the application for the following reasons:

(1) The reason Mr Gadhavi had only received the bundle a few days before the hearing was that he had moved out of his stated address to temporary accommodation. He had not informed HMRC or the Tribunal of his new address. HMRC had therefore acted correctly in sending the bundle to the address held for Mr Gadhavi;

(2) Mr Gadhavi collected the posted bundle from his neighbour. Given that he was able to do this and that he was in the midst of a dispute with HMRC, it would have been prudent to ask the neighbour to inform him as soon as any post arrived, if he did not wish to give HMRC his new address details, or to ask HMRC to email him when the bundle was sent (as he had been in email contact with Officer Brown previously). Mr Gadhavi said in his application made on 14 January 2020 that he collected his post regularly from this old address, but clearly that regularity was not frequent as the bundle was sent to him by HMRC on 19 December 2019 and he did not collect it until 9 January 2020;

(3) Mr Gadhavi collected the bundle on 9 January 2020 and he had therefore had 5 days to consider it. HMRC's evidence consisted of evidence in correspondence, which Mr Gadhavi would previously have seen, and Officer Brown's Witness Statement. The only new item was Officer Brown's Witness Statement which amounted to 7 pages, most of which recounts the history of the engagement with Mr Gadhavi. Five days to consider that evidence should have been more than sufficient. Mr Gadhavi confirmed that he had read Officer Brown's Witness Statement. This was shown to be the case by his detailed questions put to Officer Brown about his Statement;

(4) Mr Gadhavi had had ample time to find a representative. He had been notified of the hearing date on 1 October 2019. He was currently out of work and said that consequently he would struggle to be able to pay for a representative. He was looking for work and there was no evidence to show any prospect of him finding work within a reasonably short period. Consequently, there was no realistic prospect of him being able to fund the cost of a representative in the near future. This Tribunal is very experienced in dealing with litigants in person and I would ensure that the principles set out in the Equal Treatment Benchbook for litigants in person would be applied. In particular, I would ensure that Mr Gadhavi would have the opportunity to address all relevant matters so that he was not prejudiced by his lack of representative. This, in fact, meant that the hearing was significantly longer than would generally be expected for a case such as this. Mr Gadhavi was enabled to provide a full explanation of his circumstances, make detailed representations and to work through the Witness Statement of Officer Brown in great detail;

(5) Accordingly, I was satisfied that it was in accordance with the overriding objective of the Tribunal, to enable the Tribunal to deal with cases justly and fairly, that the application for adjournment should be refused.

ADMISSION OF LATE APPEAL

16. Mr Gadhavi's appeal to HMRC was late. Under section 49(2) Taxes Management Act 1970 HMRC have power to extend the time limit and I consider that, by virtue of HMRC's statement in their Statement of Case that they accepted the late appeal, HMRC have agreed to the admission of Mr Gadhavi's appeal outside the statutory time limit.

GROUNDINGS OF APPEAL

17. Mr Gadhavi's grounds of appeal against the Notice can be summarised as follows:

- (1) it would take too much time to provide the requested information. The "never-ending" process which had taken place in the previous two years had been exhausting and extremely time-consuming, adversely affecting Mr Gadhavi's physical and mental health to such an extent that it had become a form of mental harassment and torture;
- (2) there was no need to issue the Notice in view of his previous co-operation with enquiries;
- (3) documents, information and explanations previously supplied had been ignored or HMRC had failed fully to take them into account;
- (4) HMRC had been relying upon presuppositions and assumptions rather than facts;
- (5) Officer Brown's demands had continually changed despite Mr Gadhavi's consistently co-operative approach;
- (6) Officer Brown was failing to take into account information provided by Mr Gadhavi and was operating on a predetermined basis; and
- (7) Mr Gadhavi considers that he is being victimised by virtue of the never-ending, unreasonable demands made on him.

FINDINGS OF FACT

18. Having read the written evidence provided by the Appellant and the Respondent and having heard oral evidence from Mr Gadhavi at the hearing, as well as evidence shown by him from his laptop, I make the following findings.

19. Mr Gadhavi is the sole shareholder and employee of a company called UG Serve Ltd through which he has provided his services as a social worker to local authorities.

20. On 17 August 2017 Officer Brown of HMRC commenced a check under paragraph 24(1) Schedule 18 of Finance at 1998 into UG Serve Ltd for the year ended 31 October 2015. It was seen that Mr Gadhavi had received payments totalling £123,048 into his personal bank accounts which did not come from UG Serve Ltd. The monies were made up from irregular deposits, often made in cash, but also by online transfers.

21. UG Serve Ltd's accounts for the year ended 31 October 2015 only showed income of £2,324. Mr Gadhavi's personal bank statements show that he transferred £13,339 from his own account into UG Serve Ltd's bank account to enable it to pay expenses and director's remuneration of £7990 shown in its company accounts.

22. Following a meeting between Officer Brown and Mr Gadhavi, Officer Brown asked for personal bank statements from Mr Gadhavi and company bank statements for the year from 1 November 2014 to 31 October 2015. Officer Brown asked Mr Gadhavi to provide a description for each transaction shown on those statements.

23. Mr Gadhavi produced the bank statements with a detailed transaction analysis for each of them after what both parties describe as a long delay. It took Mr Gadhavi 16 -18 months

to provide the requested transaction analysis. Mr Gadhavi found the process of preparing the notes to be very time-consuming and laborious.

24. Mr Gadhavi has described cash deposits as being loans from friends and acquaintances needed because he was struggling to meet his costs of living; to pay back other loans; and as loans taken out on behalf of other people. Mr Gadhavi has described some of the monies received by him as being used in India.

25. At the hearing Mr Gadhavi described text messages and notes being used to record the loans but he has not provided any of this evidence to Officer Brown.

26. The bank statements provided by Mr Gadhavi are inadequate to show monies being lent to Mr Gadhavi and then repaid because some of the loans started before the period in the bank statements and some ended after the period in the bank statements.

27. On 14 December 2018 Officer Brown opened an enquiry into Mr Gadhavi's personal tax return for the tax year 2016-17. The Notice was issued on the same day.

28. The Notice asks for the following documents relating to the periods 6.04.14 – 20.10.14 and 1.11.15- 5.4.17 to be sent to HMRC by 15 January 2019:

- (1) bank statements for six identified bank accounts;
- (2) bank statements for any other bank/building society accounts held in Mr Gadhavi's name, held jointly by him or otherwise under his control;
- (3) credit card statements.

29. Following the issue of the Notice, Mr Gadhavi attempted to send some of the required documents to HMRC, but the HMRC server refused the email because the message size exceeded the maximum. Officer Brown wrote to Mr Gadhavi on 24 January 2019 explaining that, as noted previously in 2018, attachments must not exceed 10MB. Following a telephone conversation regarding the problems of sending the documents, Officer Brown arranged for a Dropbox account to be set up on 29 January 2019 to facilitate the submission of the documents.

30. On 4 February 2019 Mr Gadhavi wrote to Officer Brown to appeal the Notice. In the accompanying letter he described problems in obtaining statements relating to closed bank accounts and asked for further time to deal with the information request.

31. Mr Gadhavi has been concerned that compliance with the Notice will lead to him being asked to carry out further transactional analysis.

32. Mr Gadhavi declared self-employment income from "IT consultancy and web marketing" on previous personal tax returns, but in his income tax return for the year 2013-14 he stated that this activity ceased on 5 April 2014. Officer Brown explained in a letter dated 11 February 2019 (responding to Mr Gadhavi's letter of appeal) that the explanation for the repeated deposits shown in Mr Gadhavi's personal bank accounts as being loans taken out to cover his living expenses was not accepted and HMRC considered that the deposits were income from a continuing self-employment which Mr Gadhavi had failed to declare.

33. Officer Brown has explained in the letter of 11 February 2019 that the statements listed in the Notice were required to show whether the transactions in Mr Gadhavi's accounts are consistent with his description of loans and, in particular, whether the statements show loans received and then repaid.

THE LAW

34. The burden of proof rests on HMRC to show that the Notice was validly issued and that they requirements set out in Schedule 36 for its issue were met. The standard of proof is the usual civil standard of the balance of probabilities.

35. Schedule 36 provides, so far as relevant—

“1.(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”):

(a) to provide information, or

(b) to produce a document,

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

(2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

[...]

6.(1) In this Schedule, “information notice” means a notice under paragraph 1, 2, 5 or 5A.

[...]

7.(1) Where a person is required by an information notice to provide information or produce a document, the person must do so:

(a) within such period, and

(b) at such time, by such means and in such form (if any),

as is reasonably specified or described in the notice.

[...]

21.—(1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.

[...]

(3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.

[...]

(6) Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that:

(a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,

(b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or

(c) relief from relevant tax given for the chargeable period may be or have become excessive.

[...]

29.—(1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal against the notice or any requirement in the notice.

[...]

36. It is therefore not only necessary in a case such as this for HMRC to show that the documents identified in the Notice are reasonably required for the purpose of checking Mr Gadhavi's tax position, but also that one of the Conditions for issuing an information notice is met. HMRC have relied upon Condition B.

37. In the case of *Betts v HMRC* [2013] UKFTT 430 Judge Perez said that:

“in order for condition B to be met, there has to be reason to suspect that an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed as regards the appellant. That is the plain and ordinary meaning of paragraph 21(6)(a), and we see no reason to go behind that. Seeking information or documents in order to try to meet condition B is simply the wrong way round in our judgment.”

38. I respectfully agree with this description of the application of Condition B.

39. Paragraph 18 of Schedule 30 provides that an information notice only requires a person to produce a document if it is in the person's possession or power.

40. Paragraph 32 of Schedule 36 provides that on an appeal the tribunal may confirm the information notice or a requirement in the information notice, vary the information notice or such a requirement, or set aside the information notice or such a requirement.

41. Where the tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice of requirement within such period as is specified by the tribunal, or if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of HMRC following the tribunal's decision.

HMRC'S CASE

42. HMRC submitted that:

(1) The statements were required by the Notice to: check Mr Gadhavi's tax position; test the validity of explanations provided by Mr Gadhavi for the source of monies paid into his personal bank accounts; and check whether the same pattern of deposits occurred in later years;

(2) in the case of *Price v. Revenue and Customs* [2011] UKFTT 624 it was made clear that HMRC is entitled to know the full facts related to a person's tax position and as a result the statutory scheme in Schedule 36 provides a right to issue information notices seeking documents and information reasonably required for the purpose of checking a tax return;

(3) HMRC had established that the amount of £123,048 deposited into Mr Gadhavi's personal bank account did not come from his company, UG Serve Ltd;

(4) the information required by HMRC is basic in nature and needed to cooperate the information provided in the Appellant's tax returns;

(5) HMRC has offered to issue third-party notices to the banks and financial institutions, but Mr Gadhavi has not consented to this action;

(6) the information and documents requested are within Mr Gadhavi's power to obtain.

THE APPELLANT'S CASE

43. Mr Gadhavi submitted that:

- (1) he has provided HMRC with an explanation for all deposits into his bank accounts and payments made from the accounts as previously requested by HMRC;
- (2) HMRC has not taken into account the loans and their repayments which Mr Gadhavi has described. He has explained to HMRC that within his community loans are commonplace and loan agreements are not used;
- (3) while he could provide the statements requested by HMRC in the Notice, he is concerned that such action would simply lead to a further request for identification of each transaction which would be an overwhelmingly arduous task;
- (4) he had always kept HMRC informed while producing the information and transactional analysis previously requested.

DISCUSSION

Basis of findings of fact

44. The findings of fact have been made on the basis of the documentary evidence as well as the oral evidence at the hearing. Although Mr Gadhavi put several points to Officer Brown about the demands made of him and his contact with Officer Brown, Mr Gadhavi did not challenge Officer Brown's Witness Statement in relation to his identification of amounts identified in Mr Gadhavi's bank accounts and the accounts of UG Serve Ltd, or Mr Gadhavi's description of the amounts. I have therefore taken the unchallenged elements of Officer Brown's Witness Statement as the basis for most of the factual findings.

45. Where Mr Gadhavi provided further evidence orally at the hearing on the matters addressed by Officer Brown's Witness Statement (for example, saying that deposits into his accounts were not just cash deposits but also online transfers), I have reflected that evidence in the findings.

The application of Schedule 36

46. The Notice requires Mr Gadhavi to produce documents. It is clear as a matter of interpretation that "a" document does not restrict the Notice to the provision of one document. One notice can require the provision of more than one document. It is not necessary to obtain a separate notice for each document.

47. In this case the Notice requires the provision of bank statements for six identified bank accounts together with any other bank or building society accounts held in Mr Gadhavi's name and credit card statements for the periods 6 April 2014 to 20 October 2014, 1 November 2015 to 5 April 2016 and 6 April 2016 to 5 April 2017. The gap is accounted for by the fact that Mr Gadhavi had previously provided bank statements for the period October 2014 to November 2015. HMRC have not asked for an analysis of the transactions shown in the bank statements.

48. There are two elements to the statutory requirements for the issue of the Notice which HMRC must show are satisfied:

- (1) Condition B – in essence, that an officer of HMRC has reason to suspect that amounts have not been properly assessed to tax or that an assessment is inadequate; and
- (2) That the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.

Condition B

49. I am satisfied that Officer Brown had a reason to suspect that amounts which should have been charged to tax had not been for the following reasons.

50. Officer Brown has identified that a large amount of money was received by Mr Gadhavi other than from his personal service company. Mr Gadhavi says that the amounts reflect loans needed to cover his costs of living in the UK, but at the same time he has been sending money to India or using it in India on trips made by him, with no explanation of this apparently inconsistent use of the money.

51. HMRC also identified that Mr Gadhavi made payments to UG Serve Ltd in order that the company could make payments back to him as expenses and remuneration. Mr Gadhavi has provided no explanation for why he converted what he has, in effect, described as non-taxable loans into taxable remuneration. This is particularly difficult to understand in the context Mr Gadhavi has described of needing to borrow the monies to pay for his basic costs of living. Mr Gadhavi was unable to provide any explanation even when specifically asked about this at the hearing.

52. Therefore HMRC has discharged the burden on them to show that condition B was met.

Are the documents identified in the Notice reasonably required by Officer Brown for the purpose of checking the taxpayer's tax position?

53. Mr Gadhavi says that the amounts were loans received by him, but has provided little evidence to support that description of the receipts. It is generally expected in the UK that when loans are made there will be some documentation even in the form of a simple note, letter or "IOU". Mr Gadhavi described using text messages to record the receipt and repayment of loans, notes of the loans and written statements from the lenders. However, he has produced few if any of these documents, apart from one letter. If formal documentation was not used, Mr Gadhavi could still have provided the other evidence, but has not done so.

54. Although Mr Gadhavi had provided transactional analysis for the one year of bank statements previously provided by him, according to Mr Gadhavi those bank statements do not show the full picture for the amounts which he has described as loans. He has explained that is because some of the loans were taken out before October 2014 and some of the loans were repaid after November 2015. The bank statements listed in the Notice should show amounts received from lenders and later repayments.

55. The credit card statements are also reasonably required as they will provide a clearer picture of whether Mr Gadhavi's expenditure was consistent with his description of needing to borrow money to fund his basic living costs.

56. Mr Gadhavi expressed considerable concern at the hearing that HMRC had not taken into account his previous explanations for the monies received by him. However, as explained above, that explanation still leaves outstanding questions and matters of inconsistency. Mr Gadhavi's own evidence recognises that the bank statements provided for the period October 2014 to November 2015 were inadequate to show the whole picture for the transactions Mr Gadhavi has described as loans in that time.

57. I therefore conclude that HMRC have shown that Paragraph 1(1) of Schedule 36 was satisfied when the Notice was issued.

58. Mr Gadhavi also expressed considerable concern at the hearing about being required to analyse all the transactions for all the statements required in the Notice, given that it had taken him a very long time to produce the analysis for one year. However, the Notice does not require transactional analysis and it is the Notice alone which is the subject of this appeal.

59. HMRC have already explained, and I confirm for completeness, that Mr Gadhavi is only required by the Notice to provide documents which are in his possession or power as provided by paragraph 18 of Schedule 36. As made clear by HMRC and the correspondence, if any of the bank accounts is dormant and the bank refuses to provide the requested statements he should send a copy of the bank's refusal to HMRC.

CONCLUSION

60. For the reasons set out in this decision I therefore DISMISS the appeal and confirm the Notice.

NO RIGHT TO APPLY FOR PERMISSION TO APPEAL

61. Paragraph 32(5) of Schedule 36 provides that a decision of the Tribunal regarding an appeal made by a taxpayer against a notice issued to the taxpayer is final. That means that Mr Gadhavi does not have the right to appeal this decision.

**JUDGE TRACEY BOWLER
TRIBUNAL JUDGE**

Previous Release date: 16 October 2020

[Amended under Rule 37 of the First-tier Tribunal (Tax Chamber) Rules 2020]

RELEASED 29 OCTOBER 2020