



[2021] UKFTT 0352 (TC)

TC08286

Income Tax – application for permission to make a late appeal to the tribunal

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/03262

BETWEEN

NIRU Ravindra

Appellant

-and-

THE NATIONAL CRIME AGENCY

Respondent

TRIBUNAL: JUDGE CHARLES HELLIER

Sitting in public at Taylor House on 13 September 2021

Alan Pink appearing for the Accountancy Group Ltd for the Appellant

Sadiya Choudhury for the Respondent

DECISION

Introduction

1. Mrs Ravindra seeks permission to bring an appeal against income tax assessments spanning the six years after 2004/06, and against penalty assessments for the first four of those years.
2. Section 49G Taxes Management Act 1970 provides that where HMRC have reviewed an assessment, any appeal to this tribunal must be notified to the tribunal within 30 days after the date of the document of review unless the tribunal gives permission for it to be notified after the end of that period.
3. Mrs Ravindra was notified of the result of a review in relation to the assessments by a letter dated 26 May 2020. Thus, an appeal could be made after 25 June 2020 only if the tribunal gives permission. Mrs Ravindra's notice of appeal was dated 23 October 2020 and was received by the tribunal on 27 October 2020. The appeal was thus notified some 120 days after the statutory deadline and so can be pursued only if the tribunal gives permission.

The Background to the application.

4. An enquiry by the Respondent (which had adopted HMRC's functions in relation to the tax years in question under section 371 Proceeds of Crime Act 2002 ("POCA")) led to the issue of assessments for the eight tax years from 2003/04 onwards. The assessments were made mainly on the basis that certain sums passing into Mrs Ravindra's bank accounts were undeclared taxable income deriving in part from the activities of companies she controlled.
5. In the enquiry the NCA sought further information from Mrs Ravindra and her advisors but little was forthcoming. Assessments were then made in July 2015 for all eight years.
6. On 3 August 2015, a couple of weeks after the receipt of the assessments Mrs Ravindra wrote to the NCA to appeal against them and to seek the return of certain documents which had been in its possession.
7. After the return in November 2015 of some of those documents it seems that little happened until 8 July 2016, when the NCA issued penalty assessments for the eight years and also wrote setting out its view of the matter. In response to that letter Mrs Ravindra wrote to the tribunal, copying the NCA, saying that she had appealed against the assessments, and to the NCA requesting a review of the assessments.
8. It seems that there was then a gap of two years during which Mrs Ravindra withdrew her request for a review in favour of having a meeting to try to settle matters amicably. But that meeting did not take place in that two year period. Mrs Ravindra also produced to the NCA evidence of her health problems in that period. On 7 August 2018 the NCA expressed willingness to try that course of action again, and there was a meeting between Mrs Ravindra's advisors and the NCA on 16 October 2018, the upshot of which was the renewal of the request for a review.
9. Mrs Ravindra provided further information for the review officer in February 2019 when her accountant sent him an explanation of a number of substantial receipts over the period amounting in total to £456k, with some 30 pages of documentation. The income tax assessments had charged tax on an aggregate income of some £470k.
10. Six months later the NCA wrote raising further questions and seeking further documentary evidence in relation to the receipts.
11. On 21 May 2020 Mr O'Reilly of the NCA wrote to Mrs Ravindra with his review conclusions. He withdrew the income tax assessments for two years, reduced the others and

discharged or amended the penalty assessments, leaving only those assessments which are relevant to this decision. He also provided a direction made under regulation 72(5) of the 2003 PAYE Regulations. This absolved the companies who were said to have made income payments to Mrs Ravindra from PAYE liabilities in respect of those payments and consequently thrust the liability for any income tax on such payments on Mrs Ravindra without reduction for the PAYE which should have been deducted from the payments if they were emoluments. This letter made clear that any appeal to the tribunal had to be made within 30 days.

12. On 7 June 2020 (some 10 days after the review letter) Mrs Ravindra's advisors wrote to the NCA saying that Mrs Ravindra felt that the assessments were unacceptable and saying that they would "appeal to HM Courts & Tribunal Service within 30 days".

13. On 20 July 2020 (just over three weeks after the 30 day deadline) Mrs Ravindra's advisors sent the tribunal a form (signed by Mrs Ravindra and dated 17 June 2020) authorising her advisors to act for her "in this appeal" (although of course no formal appeal to the tribunal had been made at that stage).

14. Notice of Appeal was received by the tribunal on 27 October 2020. The principle Grounds of Appeal were:

- (1) The assessments assumed that monies paid into Mrs Ravindra's personal accounts were from her companies when she had provided evidence that monies from other personal sources had come into those accounts;
- (2) Documents taken by the police in relation to a failed prosecution had not been returned to her, making it more difficult to prove the source of funds;
- (3) The assessments wrongly assumed that Mrs Ravindra's companies had the capacity to make the profits which could support the payments assumed by the NCA to have been made to her; and
- (4) Her businesses had made losses and she had borrowed funds from friends to support them; those funds had gone through her account.

The strength of the arguments for and against the assessments

15. From the bundle of correspondence and from the statements of the advocates I note the following features of the arguments for and against the assessments:

- (1) Because of the time limits in section 36 et al TMA, the NCA would have to show that Mrs Ravindra had deliberately made incorrect tax returns for the tax years before 2008/09, and had been careless in relation to later years. This can be a heavy burden to discharge.
- (2) The NCA had adopted HMRC's functions in relation to the relevant years under section 361 POCA. That section provides for such adoption to cease at any time when the NCA did not have reasonable grounds for suspecting that income arose to Mrs Ravindra as a result of a person's criminal conduct. The NCA would have to show that they had such suspicion at all relevant times otherwise their actions would have been unlawful.
- (3) Because of the condition for the operation of Regulation 72(5) of the PAYE Regulations, in order to support the assessments it would have to be found that Mrs Ravindra received relevant payments from her companies knowing that those companies had wilfully failed to deduct PAYE.

(4) I was not able to assess the strength of the evidence which Mrs Ravindra might bring to rebut the assessments, but Mrs Ravindra would have a greater chance of success in the appeals if she provided more documentary evidence as to the source of the deposits to her accounts than she had hitherto. It is often difficult to recall with accuracy the details of events ten or more years ago and absent documentary evidence Mrs Ravindra's case could depend largely on the view the tribunal hearing the substantive appeal took of her reliability and veracity.

(5) The NCA would have to rebut any argument that amounts received by Mrs Ravindra from her companies were distributions in respect of her shareholdings and so not employment income.

16. Overall I thought that the NCA would have to work hard to succeed but that neither party had an obviously overwhelming case.

The Period of Delay

17. In 2020 HMRC published a notice in which they said that if a person had been affected by the coronavirus they would get an extra three months to appeal (this related to making appeals to HMRC) and that, in relation to appeals to the tribunal, they would not object if a taxpayer asked the tribunal to hear an appeal after the 30 day limit if both (i) "your review decision is dated February 2020 or later [and (ii)] you ask within 3 months of the normal deadline".

18. By section 324(3) POCA the NCA when exercising functions of HMRC must apply interpretations and concessions published by HMRC and by subsection (4) take in to account other material published by HMRC.

19. Mrs Ravindra's notice of appeal to the tribunal was made more than three months after the normal deadline, and no request was addressed to the NCA within the three month period referred to in HMRC's notice.

20. Mr Pink argues that an ordinary taxpayer would have understood HMRC's practice as giving an extra three months to appeal while coronavirus raged, and against that background he says that the notice of appeal was only just over one month late: I agree that a someone who, like many, did not enjoy detail would take that view. That he says was not a very long delay in the context of the extended time limit and the discussions with the NCA which had lasted some five years.

21. Miss Choudhury says that the tribunal must measure the delay by reference only to the statutory test: the tribunal was not bound or affected by HMRC's practice. Against a 30 day time limit the delay was serious and significant. Even compared to a four month limit (30 days plus 3 months) an extra month was a serious delay.

22. It seems to me that the significance of the delay is affected by the published practice of HMRC. That practice indicates that they (and so the NCA) would not expect to achieve the normal certainty which would arise where no appeal was lodged within the usual 30 day period and therefore that the prejudice arising to them as a result of an extra delay would be less. The extent of prejudice to the NCA seems to me to be one of the metrics against which the seriousness or significance of the delay is to be judged.

23. I do not, however, consider that the length of the period of discussion before the review letter is issued is a relevant consideration. Once the statutory action which triggers the ability to appeal to the tribunal has been taken, the conduct of the dispute is subject to a new statutory regime.

24. Overall I conclude that the delay was significant: an extra month after a four month period is not to be overlooked without good reason. I do not however regard the delay as particularly serious. That is because the action of the Appellant's advisors in giving HMRC notice of the intention to appeal within a few days after the review letter put the NCA on notice that an appeal was to be expected, and given the published three month extension, it was or would not be not substantially adversely affected by the additional delay.

The Reasons for the Delay

25. In her notice of appeal Mrs Ravindra says that her appeal was made late because she had been suffering from ill health, had been advised that she should not travel and that this had caused difficulties contacting her tax advisors and providing information to them.

26. Miss Choudhury says that Mrs Ravindra managed to complete a form giving her advisors authority to conduct the appeal and that it is unclear what further information her accountants needed – particularly given the long prior discussions.

27. Mr Pink says that there is a difference between signing a authorisation and providing grounds of appeal. The latter required much more detailed and technical work.

28. Having seen a letter from Mrs Ravindra's doctor, I accept that since 2019 she has been suffering from depression and anxiety, that she had reported some short term memory loss and had, in 2019, been diagnosed with a "mild cognitive impairment".

29. I accept that these health problems may have contributed to the delay in producing a notice of appeal. But given the previous correspondence between the parties, there must have been a fair understanding on the part of Mrs Ravindra and her advisors of the NCA's position and the arguments available to Mrs Ravindra. Further when one looks at the grounds of appeal they do not display any particular complication and indeed appeared to have been written by Mrs Ravindra herself (although perhaps with guidance from her advisors). It seemed to me to be likely that the grounds of appeal could have been settled within a couple of months of receiving the review letter notwithstanding Mrs Ravindra's health problems.

30. I also understood that the need to give a notice of appeal had unfortunately been overlooked by those advising Mrs Ravindra or by Mrs Ravindra. It seems to me that this was the principle reason for the delay. Somehow the process of appealing to the tribunal had started and the form appointing the advisors to act in the appeal had been prepared but then, by mistake, forgetfulness or lack of attention, the process stalled. To the extent it was a failure by her advisors it must be attributed in my view to Mrs Ravindra (see in a similar vein paras [54 and 55] of the UT decision in *HMRC v Katib* [2019] UKUT 189 (TCC)).

The Balance: looking at all the circumstances.

31. It seems to me that the following considerations are relevant to whether or not permission should be given:

- (1) It is important that statutory times limits should be respected;
- (2) The delay in giving notice to appeal was significant but not particularly serious;
- (3) The main reason for the delay was oversight, but it was exacerbated by Mrs Ravindra's health problems. There was no obvious reason why a notice of appeal could not have been produced within a three month period;
- (4) Neither party had an obviously overwhelming case;
- (5) Given the warning the NCA had of the intended appeal, permitting extra time for the appeal should not prejudice it greatly.

32. Taking these together I am, on balance, not satisfied that I should give permission for the appeal to be brought.

Conclusion

33. I do not give permission for the appeal to be made.

Rights of Appeal

34. 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.

**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 28 SEPTEMBER 2021