



[2021] UKFTT (TC)

**TC08292**

*VAT – personal liability notice – permission to bring late appeal – delay due to health issues  
– permission refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/01551**

**BETWEEN**

**AZAM ALI**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The hearing took place on 30 April 2021. The hearing was held on the Tribunal's video hearing platform. A face to face hearing was not held because of restrictions arising from the COVID-19 pandemic. The documents to which I was referred formed a bundle of 517 pages.**

**Mr Ahmed of CTM Tax Litigation for the Appellant**

**Ms Y Khan and Ms E Hickey, litigators of HM Revenue and Customs' Solicitor's Office,  
for the Respondents**

## DECISION

### Introduction

1. This is an application for permission to bring a late appeal against a personal liability notice (PLN). A PLN was first issued on 12 October 2016, in the amount of £222,869. This was reduced following a statutory review and an amended PLN, in the amount of £183,540, was issued on 28 August 2018.

### Background chronology

2. In June 2011 HMRC received a VAT registration form submitted by an agent to register the appellant, Mr Ali, as a sole proprietor of a restaurant business. The VAT registration form stated that the previous owner of the business was Aklas Ali, Mr Ali's brother. The business was registered for VAT from 1 June 2011.

3. On 14 March 2012, Pabna Restaurant Limited ("the company") was incorporated with Mr Ali as the sole director.

4. On 21 March 2012, an application was submitted electronically to HMRC to transfer Mr Ali's VAT number from his sole proprietorship to the company. The number was transferred with effect from 1 April 2012.

5. HMRC opened an enquiry into the company's tax affairs in January 2015. In August 2016 HMRC issued a pre-assessment letter for VAT and indicated that they intended to issue a penalty for deliberate and concealed inaccuracies.

6. A notice of VAT assessment for the VAT periods 07/11 to 06/16, in the amount of £262,200, was issued to the company on 19 September 2016. A penalty notice was issued to the company on 12 October 2016, in the amount of £222,869.90. A PLN was issued to the director at his home address on the same date. The company was advised that a PLN had been issued to the director.

7. A request for review of the VAT assessments was sent to HMRC on 19 October 2016. HMRC issued a view of the matter letter in respect of VAT on 15 December 2016.

8. On 23 February 2017 HMRC issued a review conclusion letter for VAT upholding the assessments and varying the penalties on the company to £183,540.

9. On 25 March 2017, an appeal was sent to this Tribunal in respect of the VAT assessments on the company. At the same time, the company also appealed a corporation tax assessment and an appeal was submitted in respect of an assessment on Mr Ali for income tax in respect of the period of sole proprietorship. The direct tax assessments arose out of the same enquiries as the VAT assessments. No appeal was made against the original PLN.

10. The company subsequently went into liquidation some time between March and June 2017. On 25 October 2017 the liquidator filed an application for VAT de-registration.

11. On 16 March 2018 the liquidator advised that he intended to withdraw the company's appeals in respect of the VAT and other assessments.

12. An application for ADR in respect of Mr Ali's income tax appeal was approved on 13 April 2018. An application was made to the Tribunal to stay the income tax appeal until September 2018 in order to allow the ADR process to be concluded.

13. On 24 April 2018, the Tribunal issued a closure letter for the VAT and corporation tax appeals by the company.

14. Following an ADR meeting, the income tax appeal was notified to the Tribunal as having been settled and a closure letter in respect of that appeal issued on 7 August 2018.

15. HMRC issued an amended penalty notice to the company for the VAT on 28 August 2018 and an amended PLN to Mr Ali on the same date, each reflecting the reduction in the review conclusion letter in February 2017. In correspondence accompanying the amended PLN, HMRC stated an anomaly had been identified in that their records had been updated to reflect the lower amount when the review concluded in February 2017 but that amended penalty notices had not been issued at that time.

16. On 30 July 2018, Mr Ali was disqualified from acting as a company director for nine years. The Insolvency Service concluded that he had caused the company to suppress and conceal sales figures so that the company underdeclared and underpaid tax. Mr Ali had not disputed the findings.

17. On 5 January 2019 the company was dissolved.

18. On 20 April 2020, the PLN was appealed to this Tribunal.

### **Appellant's submissions**

19. The core contention for Mr Ali was that he had suffered from mental health issues for all of his adult life and that these had caused any delays in appealing to this Tribunal.

#### *Whether appeal made in time*

20. In his skeleton argument Mr Ahmed acknowledged that the appeal was very late. In the hearing, however, he submitted that Mr Ali had appealed the amended penalty notice in time. The amended PLN had stated that "if you want a review, you should write to [HMRC] by 28 September 2018". HMRC's records showed that Mr Ali had called HMRC on 24 September 2018. He had been advised that his only recourse was to contact debt management and it was submitted that this call should have been acknowledged as an appeal and had been misadvised of his appeal rights in the call.

#### *Mr Ali's evidence*

21. Mr Ali provided a witness statement and gave oral evidence at the hearing.

22. By way of background, Mr Ali explained that the company had been set up to own the family restaurant which had been started in 2006. Mr Ali had been appointed as the director as a mechanism to address his low self-esteem and to give him confidence. Mr Ali did not really understand what had been done at the time but he did what his brother had thought best for him.

23. Mr Ali said that his brother, Aklas, had day to day responsibility for the business and had engaged a manager to run the restaurant as Mr Ali was away from work for long periods each year due to depression and anxiety. Mr Ali had not had control over the business. Mr Ali had acted primarily as a waiter in the restaurant, although he would also assist the manager appointed by his brother when required.

24. Similarly, Mr Ali explained that his brother had dealt with the enquiries and the appeal process as Mr Ali was unable to do so due to his mental health issues. Mr Ali's brother had taken over the whole process when the enquiries were opened and had instructed a law firm to assist. His brother had liaised with Mr Ali so that Mr Ali did not have the stress of dealing directly with it, and Mr Ali had signed papers when he was asked to do so.

25. Mr Ali said that he did not know what defence was put forward regarding the company and personal penalties. He said that he knew only that the assessments and penalties were being challenged by a solicitor instructed by his brother, who was also paying for the advice. His brother was still paying for his representation in this Tribunal matter.

26. Mr Ali considered that all parties must have believed that the PLN was under review throughout the appeal and ADR process, as there was a general challenge to the assessments which was not concluded until August 2018. At this time, his mental health was extremely poor and he could not deal with the issues. Mr Ali did not participate in the ADR process: only a legal representative and his brother attended.

27. Mr Ali had been disqualified as a director shortly beforehand, although he had no recollection of accepting responsibility. It had all been dealt with by his brother's solicitor. The news of the disqualification had been widely reported in local papers and so he had to deal with everyone talking about him. He had not seen the full reasons for suggesting that he was aware of the suppression or responsible for errors but confirmed that he had not been aware of any suppression and wanted the opportunity to review HMRC's case and defend himself.

28. It had all been too much for Mr Ali and he had effectively shut down as he could not cope. His brother had told him that he had no more money to instruct lawyers and Mr Ali did not know what to do.

29. He would be made bankrupt if he could not challenge the PLN. He and his family were concerned as to the effect on his mental health if he were to lose the family home.

#### *Medical evidence*

30. Various medical records were produced to the Tribunal, as follows:

(1) February 2002: registrar letter referring to Mr Ali suffering from depression. The letter refers to the problem having existed for nearly four years and notes that it would be difficult to continue to manage Mr Ali as an outpatient, although it was not considered necessary to resort to compulsory admission at that time

(2) March 2002: a risk profile indicated that Mr Ali was at slight risk of impulsive self-harm due to stress around physical symptoms and that he was unable to accept medical advice that he was not physically unwell. The level of risk was considered difficult to assess as he had had limited contact with mental health services.

(3) September 2014: Mr Ali made a call to the ambulance services as he was reporting hearing noises, seeing flashing lights and feeling dizzy. He also had arm weakness and head pain. He was advised to attend an emergency treatment centre.

(4) September 2014-October 2014: doctor's surgery notes described various visits for physical symptoms. The notes describe Mr Ali as "extremely anxious" and note that the symptoms may be the result of anxiety.

(5) October 2014: undated out of hours call report indicated that Mr Ali was concerned that he had had difficulty swallowing for two days and that the condition was worsening. His chest was aching. He was advised to contact a primary care centre within two hours.

(6) June 2015: Mr Ali called the ambulance services as he had returned from Morocco that morning and noticed a blister on his toe. He was advised to contact his GP within three days.

(7) March-June 2017: doctor's surgery notices describe various calls and visits, relating to physical symptoms including migraine. Describe Mr Ali as having anxiety.

(8) February 2018-October 2018: doctor's surgery notes regarding visits referring to Mr Ali having ongoing stress and that his family had encouraged him to seek counselling, which he had declined. Mr Ali was issued with sick notes from 26 February 2018 to 5 May 2018. He started counselling in August 2018 and had sick notes from 8 August 2018 to 16 October 2018.

(9) July 2020: Mr Ali took an overdose of medication. He called his GP the following day, saying that it had been triggered by a panic attack as he was worried that he might lose his house. His brother and wife had taken the medication from him and destroyed it. The GP advised him to go to A&E for a check, but Mr Ali refused.

#### *Reasons for the delay*

31. Mr Ahmed submitted that it was clear that Mr Ali's mental health was such that he was unable to deal with the appeal processes either at the time the original PLN was issued or later, when the amended PLN was issued. The GP surgery notes submitted in evidence formed part of 235 pages of such notes, detailing visits and calls. As such, he had had no involvement with the appeal submitted by the company against the VAT assessments, nor did he attend the ADR meeting.

32. It was also submitted that the ongoing mental health issues formed a good reason for the delay in appealing to this Tribunal. Mr Ali had taken an overdose shortly after the appeal had been submitted. Mr Ahmed stated that during this appeal process, Mr Ali had been receiving regular counselling in order to be able to cope and that his family and medical professionals remain concerned. Mr Ahmed contended that Mr Ali also had no funds for professional advice, and the present proceedings were being funded by his brother. It was submitted that Mr Ali had taken advice from Citizens Advice in 2019, and they had written to HMRC.

33. Mr Ahmed contended that those who were involved must have believed that the PLN was under review and appeal as there was a general challenge to all of the assessments and penalties (including non-VAT assessments and penalties) which was not concluded until the ADR process ended. Confirmation had been received from Mr Ali's ADR representative that the ADR meeting had been attended by Mr Ali's brother, and that Mr Ali had provided him with authority to do so. She had also stated that HMRC were aware of Mr Ali's health issues as they had been provided with his medical records. Mr Ahmed submitted that Mr Ali's brother had paid all of the fees relating to the appeals and ADR because it was his business.

34. Mr Ahmed stated that the correspondence relating to the appeals, and the appeal documents were completed by others, although these had been signed by Mr Ali. Although attempts had been made to obtain evidence of his brother's control of the business from the accountant, the accountant's office had advised that the accountant is in India and unable to be contacted.

#### *Merits of the case*

35. In addition to the submissions that Mr Ali had not been responsible for the business, such that he could not have been responsible for the behaviour which led to the penalties, it was submitted that para 13(3) of Schedule 24 Finance Act 2007 requires that a PLN must be raised within twelve months of the end of the relevant appeal period for the decision correcting the inaccuracy.

36. Although HMRC had contended that the PLN sent in August 2018 was an amendment of an in-time PLN, and not a new PLN, Mr Ahmed contended that it could not be right that there was no deadline for amendment of penalties. He confirmed that he was unable to find any support for this contention. He further contended that the amended PLN should be regarded as a new PLN, which is why the amended PLN contained details of appeal rights.

37. Mr Ahmed submitted that, as the review conclusion letter was raised on 23 February 2017, the final PLN should therefore have been issued within twelve months of the end of the associated review period and therefore should have been issued by 26 March 2018. It was submitted that the PLN was accordingly invalid, and the substantive appeal would have to succeed on that basis.

## HMRC submissions

38. HMRC submitted that the three-stage approach set out by the Upper Tribunal in *Martland* [2018] UKUT 0178 (TCC) (“*Martland*”) should be followed, to establish the length of the delay, the reason for the delay and then consider all of the circumstances of the case.

### *Length of the delay*

39. HMRC accepted that the amended PLN contained information as to appeal rights and that the deadlines in the amended PLN applied, rather than those in the original PLN. However, the amended PLN had required that an appeal be made to either HMRC or the Tribunal by 28 September 2018. The appeal to the Tribunal on 20 April 2020 was therefore made almost a year and seven months late. It was submitted that this was clearly a serious and significant delay in the context of an appeal right which must be exercised within 30 days.

### *Reasons for the delay*

40. HMRC submitted that although health issues such as long term anxiety and depression could amount to a good reason for delay, they did not automatically provide a good reason for a delay in appealing.

41. In this case, the assessments had been appealed with documents signed by Mr Ali, and HMRC contended that he had clearly been able to instruct someone to act on his behalf. The person acting on his behalf could clearly have submitted the appeal in time, but no such appeal had been filed. If Mr Ali believed that the PLN had been appealed, HMRC contended that a reasonable person would have checked to make sure that it had so been appealed.

42. HMRC also contended that Mr Ali was also able to instruct an agent to act on his behalf throughout the ADR and had provided an authority for his brother to attend the ADR meeting on his behalf. Shortly after the amended PLR had been issued, Mr Ali had called HMRC in person in September 2018 to query the debt. He was, it was submitted, clearly capable of dealing with his affairs at that time but did not submit an appeal.

43. HMRC submitted that Mr Ali therefore had no good reason for the late appeal: he could have used an advisor to submit the appeal on time or his brother could similarly have arranged for others to act on his behalf.

44. Further, HMRC noted that Mr Ali had had health issues for a considerable length of time. Although HMRC had sympathy with his circumstances, they submitted that this did not preclude him from appointing an agent to act on his behalf, as he had previously shown that he was capable of doing.

### *Circumstances of the case*

45. HMRC contended that case law, including *Martland*, had made it clear that it was necessary for statutory time limits to be respected and that the importance of finality in litigation was well established in case law.

46. It was submitted that if the application for permission was granted, HMRC would be prejudiced in that they would have to divert resources to defend an appeal which they were entitled to consider closed. Other taxpayers would be prejudiced as resources would be diverted to consider the appeal. HMRC acknowledged that Mr Ali would be prevented from challenging the PLN in dispute but submitted that this was not sufficient to warrant granting permission when balanced against the factor in the case.

### *Merits of the case*

47. HMRC submitted that the PLN had been issued on 12 October 2016, in time. The review conclusion had the legal effect of varying that penalty and was not a new assessment. Accordingly, the time limits in para 13(3) of Schedule 24 Finance Act 2007 were not relevant.

48. With regard to the contention that it was Mr Ali's brother who was responsible for the running of the company, HMRC submitted that Mr Ali was "an officer of the company" and so liable to a PLN under para 19, Schedule 24, Finance Act 2007. He was the sole director listed at Companies House, and had signed the application for VAT registration and to transfer his VAT registration to the company. There were also other indications, including the fact that Mr Ali had been present during an unannounced visit and had answered all questions about the business operation and record keeping. The ADR opening statement referred to "the business operated by Mr Ali". There was nothing in HMRC's files to indicate that Mr Ali's brother was an "officer of the company".

49. It was submitted that, to the extent that the merits of the case needed to be considered, they were weak.

### **Relevant law**

s49 of the Taxes Management Act 1970 ("TMA 1970") provides:

"49 Late notice of appeal

49(1) This section applies in a case where-

- (a) notice of appeal may be given to HMRC but
- (b) no notice is given before the relevant time.

49(2) Notice may be given after the relevant time limit if-

- (a) HMRC agree, or
- (b) where HMRC do not agree, the tribunal gives permission.

...

49(8) In this section "relevant time limit", in relation to notice of appeal, means the time before which the notice is to be given (but for this section)."

### **Discussion**

50. The starting point, as noted in *Martland*, is that permission to bring a late appeal should not be granted unless it is appropriate to do so, following the three stage approach to the matter.

*Is the delay serious and significant?*

51. The amended PLN was issued on 28 August 2018 and stated that any appeal needed to be made by 28 September 2018; the appeal to this Tribunal was not made until 20 April 2020. This is a period of approximately 19 months.

52. It was contended that Mr Ali's call to HMRC on 24 September 2018 should be regarded as an appeal to HMRC, within the relevant time limit. The contents of the call indicate that Mr Ali said only that he could not afford to pay the demands being sent to him and that, when he called the number on the letters, he could not get through. I consider that it is more likely that this call was made in response to letters from HMRC debt management rather than with any intention of appealing against the PLN. It also appears to be in connection with the income tax assessment, as there is reference to HMRC having reached with the agent who represented Mr Ali during ADR.

53. Mr Ahmed contended that, as Mr Ali was told to call the business payment support service, he was misled as to his appeal rights at this time. This is presumably a contention that he was misled by omission, as there is nothing in the exchange referring to appeal rights. The contents of the call are such that I do not consider that it could reasonably have been regarded as an appeal to HMRC in respect of the PLN, and I do not consider that it could be regarded as misleading Mr Ali as to his appeal rights.

54. I note also that Mr Ahmed accepted in his skeleton argument that there was a substantial delay in appealing. The notice of appeal also acknowledges that it was made late.

55. I find therefore that there was a delay of approximately 19 months in bringing the appeal. The Upper Tribunal in *Romasave* ([2015] UKUT 254) stated (§96) that “a delay of more than three months cannot be described as anything but serious and significant”. The delay in this case is therefore clearly “serious and significant”.

#### *Reasons for the delay*

56. The reasons given for the delay are (in summary) that Mr Ali was unable to deal with his affairs throughout the period of delay due to his health issues. He had also, at around the same time, had to deal with the liquidation of the company and being disqualified as a director, both of which exacerbated his health issues.

#### *Evaluation of the circumstances of the case*

57. I have sympathy with Mr Ali’s health issues but consider that the evidence before me does not support the contention that he was incapable of dealing with his affairs throughout the period of delay.

58. I note that Mr Ali was able to call HMRC to discuss the debt on 24 September 2018. As noted above, I do not consider that this call can be regarded as an appeal to HMRC: Mr Ali was calling to discuss the amounts due for payment and could not get an answer on the telephone number set out in letters relating to the debt. However, I do consider that this call shows that Mr Ali was able to deal with his tax affairs in September 2018 during the appeal period in respect of the amended PLN.

59. I note also that Mr Ahmed stated that Mr Ali had sought advice from Citizens Advice at some point in 2019, and that they had written to HMRC. No copy of any such correspondence was provided to the Tribunal and so it is not possible to determine whether this was in respect of the PLN or whether it was in connection with the debts outstanding. Again, however, I consider that this shows that Mr Ali was not prevented by his mental health issues from seeking advice during the period of delay.

60. Further, Mr Ali’s evidence is that everything had been dealt with by his brother in the appeals process and he had simply signed what he was told to sign. There was no clear explanation why Mr Ali, or his brother, was not able to instruct advisers to appeal the PLN in time in the same way. In his skeleton argument, Mr Ahmed noted that HMRC contended that health issues did “not preclude [Mr Ali] from appointing an agent. On what basis do the Respondents reach that conclusion will be something that will be explored during the hearing no doubt.” This is not an explanation.

61. Given the stated reliance by Mr Ali on his brother, I find it surprising that Mr Ali’s brother did not attend the hearing and did not give evidence as to his role in these matters. I note also that it was submitted that Mr Ali had attempted to obtain evidence of his brother’s involvement in the business from the accountant but had not managed to do so. Again, it is curious that such evidence was being sought from a third party and not from Mr Ali’s brother directly.

62. Mr Ali stated in the hearing was that his brother had told him that he had no more money to deal with the lawyers. It was not clear whether this was during the appeal period for the amended PLN or at an earlier stage. It was not specifically submitted that there was a lack of funds preventing an appeal being brought during the period of delay, and I note that it was stated that Mr Ali’s brother was paying for representation at the time of this application. As set out above, Mr Ali was capable of seeking advice from Citizens Advice during 2019 but nevertheless still did not appeal the PLN at that time.



63. For the reasons set out here, I do not consider that Mr Ali has established that there is a good reason for the delay which existed throughout the period of delay.

64. With regard to the prejudice to the parties, if I refuse permission to appeal then Mr Ali will be unable to challenge the PLN further. Whilst it is not appropriate to conduct an exhaustive analysis of the merits of the substantive appeal, the circumstances should be reviewed to determine if there is clearly a strong case, where there may be greater prejudice to an appellant in refusing permission to appeal.

65. With regard to the contention that the PLN is out of time and therefore invalid, I note that Mr Ahmed was unable to provide any support for this submission. Mr Ahmed's contention that there must be time limits for such variation would tend to mean that the original, higher, PLN would have to stand.

66. It is clear from the papers that the original PLN was issued on time; a subsequent reduction of the amounts charged does not invalidate that original PLN nor does it amount to a withdrawal of the PLN. As such, I do not agree that this provides any strong case in favour of Mr Ali.

67. Mr Ali's case otherwise is that his brother was responsible for running the company, such that any inaccuracies could not be attributable to Mr Ali, who was the officer of the company. I have considered the evidence and submissions made and consider that it is not overwhelmingly clear that Mr Ali would succeed in challenging the PLN on this basis. For example, the medical evidence provided does not clearly cover the entire period under enquiry, and correspondence from the accountants included in the bundle clearly shows that they were dealing with Mr Ali at various points in respect of administration matters relating to the business. As such, I consider that refusing permission to appeal would not amount to a demonstrable injustice in this context.

68. I have also considered the submissions that refusal of permission to appeal would result in Mr Ali's bankruptcy, that he would therefore lose his house, and that this would have a significant deleterious effect on his mental health. However, no supporting evidence as to Mr Ali's financial state was provided. It appears that his family have provided him with considerable support and there was no submission made that they would not continue to do so.

69. There is a principle that litigation should be finalised as expeditiously as is reasonably possible, as noted in *Martland*. HMRC are entitled to expect that an appellant will appeal within the statutory time limits and so, if no appeal is made, that the matter has become final. If permission were granted, HMRC would be required to reopen a case and expend time on, and divert resources to, a matter that they had been entitled to consider final. Mr Ahmed stated in his skeleton argument that the argument as to time and resources was "puzzling" as "it would simply take the same time to progress as it would have done in 2018". This overlooks the fact that HMRC have other matters to deal with and that, having considered the case closed, they would have allocated their time and resources elsewhere.

70. The decision in *Katib* [2019] UKUT 189 (TCC) noted (at §15) that respecting statutory time limits is of particular importance to the exercise of the FTT's discretion. In *BPP Holdings* [2017] UKSC 55 the Supreme Court endorsed the view (at §25) that the Tribunal should not accept a "more relaxed approach to compliance" than the courts do, and in the same case the Court of Appeal noted that the correct starting point is that compliance should be expected unless there was a good reason to the contrary ([2016] EWCA Civ 121, §38).

## **Decision**

71. Considering all of the circumstances of the case, I do not consider that the potential effect on Mr Ali's health outweighs the importance of respecting statutory time limits where the delay

has been as serious and substantial as it has been in this case and no good reason has been established for the failure to appeal throughout the period of delay.

72. The application is therefore refused.

**Right to apply for permission to appeal**

73. 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.

**ANNE FAIRPO  
TRIBUNAL JUDGE**

**RELEASE DATE: 4 OCTOBER 2021**