



[2021] UKFTT 363 (TC)

TC08297

PROCEDURE – personal liability notices – reinstatement of appeal – allowed – whether jurisdiction to hear appeal against a corporation tax personal liability notice where no appeal made to HMRC – no – application for permission to appeal a VAT personal liability notice and s61 notice out of time – whether good reason for delay – no – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01392

BETWEEN

MUSTAK TALATI

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The hearing took place on 14 May 2021. The hearing was held using the Tribunal 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 are a hearing bundle of 251 pages together with the appellant's witness statement and skeleton argument, and a number of additional emails.

Mr Ahmed, of CTM Tax Litigation, for the Appellant

Mr Matthews, litigator 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 in respect of three notices issued by the Respondents (HMRC) to the Appellant (Mr Talati), as follows:

(1) A personal liability notice (“PLN”) issued on 29 August 2017 as a result of a loss of VAT, under para 19, Schedule 24, Finance Act 2007.

(2) A civil evasion penalty issued under s61 Value Added Tax Act (VATA) 1994.

2. Further, the appellant also applied to reinstate an appeal against a PLN issued on 29 August 2017 as a result of a loss of corporation tax, under para 19, Schedule 24, Finance Act 2007. This appeal had been withdrawn on 26 April 2021. If reinstatement were to be successful, an application was also made for permission to bring a late appeal in respect of this PLN.

Background

3. HMRC commenced an enquiry into the tax affairs of Mr Talati and Hyfame (UK) Limited (“Hyfame”), a company of which he was the sole director and sole shareholder. Hyfame was dissolved on 24 July 2018.

4. On 14 March 2017, HMRC issued a number of corporation tax assessments. These were appealed to HMRC on 28 April 2017; HMRC agreed to the assessments being appealed late.

5. On 29 August 2017, HMRC issued VAT assessments for a number of VAT periods. Penalties were also issued to Hyfame in respect of both corporation tax and VAT. Further, Hyfame was issued with a penalty under s95 Taxes Management Act (TMA) 1970 and a civil evasion penalty under s60 VATA 1994.

6. On the same date, HMRC issued the penalties which Mr Talati now seeks permission to appeal late. These transferred 100% of the liability for the company penalties to Mr Talati.

7. On 26 September 2017, Mr Talati’s agent, Ryalls HMB, appealed to HMRC in respect of the assessments. HMRC acknowledged the appeal on 25 October 2017 and asked whether Mr Talati intended to appeal the penalties as well.

8. HMRC set out their view of the matter with regard to the corporation tax assessments and the VAT assessments on 2 February 2018. Mr Talati was advised that he could request an independent review or appeal to this Tribunal within 30 days.

9. On 16 March 2018 HMRC emailed Mr Sidat of Ryalls HMB advising that the deadline for requesting a review, or submitting an appeal, had expired.

10. On 20 April 2018, as no information had been received, HMRC wrote to Mr Talati and Mr Sidat to confirm that the appeals were now treated as settled.

11. On 19 June 2018, Ryalls HMB wrote to HMRC, advising that Mr Talati had not been well. They asked for their letter to be treated as an appeal against the “assessments raised”. HMRC responded on 10 July 2018 to advised that they considered the appeals to have been settled, but that Mr Talati could ask for a review request to be admitted late or appeal to this Tribunal for permission to bring a late appeal.

12. On 13 May 2020, Mr Talati appealed to this Tribunal and applied for permission to make a late appeal.

Applicant's evidence and submissions

Submissions as to reinstatement application and jurisdiction

13. Mr Talati's representative explained that the appeal against the corporation tax PLN had been withdrawn in the belief that this Tribunal had no jurisdiction to hear the appeal as it appeared that it had not first been appealed to HMRC.

14. However, it was submitted that an email from HMRC in 13 March 2020 had stated that, if Mr Talati wanted to challenge the corporation tax PLN, he would "need to submit a late appeal to the Tribunal". It was submitted that this email should be treated as HMRC having accepted that the PLN had been appealed to them. Therefore, the Tribunal should be regarded as having jurisdiction and the appeal should be reinstated and the application for permission to appeal out of time considered.

15. It was submitted that there would be no prejudice to HMRC with regard to this, and that the application for reinstatement was being made within the 28 days permitted by the Tribunal rules.

Evidence

16. Mr Talati provided a witness statement and gave oral evidence at the hearing. He explained that he had little recollection of the events at the time that the assessments and penalties were raised, but that he had believed that the matters had been settled and that only a small liability existed and that had stayed with Hyfame. His accountant had advised him that there was only a small company liability and that there would be no personal liability.

17. Mr Talati agreed that the penalties were issued to him in August 2017. He said that he would have left these to his agent to deal with together with the assessments and company penalties. He had told his agent that he wanted to appeal the decisions and had told his agent to do "whatever's best" and left it to him. He did not think to ask HMRC whether matters had been resolved. As he had heard nothing, he thought it was all sorted out.

18. Mr Talati explained that he had had a quadruple heart bypass in August 2017 and had been very unwell both before and after the operation. Mr Talati provided a copy of a letter from his GP, dated 16 November 2017, confirming that Mr Talati had been under the care of a consultant cardiologist but had been discharged back to his GP's care. The GP noted that Mr Talati was at that time undergoing stress and depression due to his medical condition. Mr Talati stated that he still had a lot of pain in June 2018, and had had a check up in India as his UK doctor had not done much. His son would have dealt with any enquiries whilst Mr Talati was away, after contacting Mr Talati for answers.

19. Mr Talati believed that a tax consultant had been engaged by his agents to deal with the matter. This consultant had died in late 2018. Mr Talati had become aware of this in late 2019. His agent, Mr Sidat, had also had a stroke in 2019 and was still not well.

20. Mr Talati said that his agent had also approached another tax consultancy, HKP, and that there had been an initial meeting, but this firm had not taken on the case.

21. Mr Talati had not been aware that he had any personal liability after 2018. He would have appealed the personal penalties at the time if he had been aware that they had not been removed. He had been unaware that anything was owed until HMRC pursued the debt in 2020. He did not recall receiving correspondence from HMRC regarding the liability at his home address during 2018 and 2019, and said that he would have been shocked at the amounts owed if he had received these letters.

Submissions on lateness

22. It was not disputed that the appeal was very late. It was submitted that the delay was approximately 24 months, as HMRC had written to the company and Mr Talati on 2 February 2018 referring to the corporation tax and VAT assessments and had then advised him that he could request a review or appeal to the Tribunal within 30 days of the date of that letter. As such, the deadline for appeal should be treated as being March 2018 rather than any earlier date.

23. It was submitted that the reason for the delay was a combination of Mr Talati's ill-health, which had continued to June 2018, and the death in late 2018 of the tax consultant appointed to deal with the matter. Mr Talati's agent had later found out that the consultant had been ill for some time before his death, which would also explain any lack of communication in the months prior to his death. It was agreed that Mr Talati was likely to have received correspondence from HMRC in 2018 and 2019, despite his lack of recollection.

24. It was submitted that Mr Talati had clearly intended to resolve matters with HMRC, having paid for representation that had resulted in negotiations with HMRC in 2018. It made no sense that he would then ignore the outcome and wait for statutory demands to be made before appealing.

25. It was submitted that overall there were very good reasons for the late appeal. Further, the amount of the penalties would result in Mr Talati being made bankrupt if he was not permitted to appeal late.

HMRC evidence and submissions

Submissions on reinstatement and jurisdiction

26. HMRC submitted that their email of 13 March 2020 had been misinterpreted by Mr Talati's representative. An appellant is required to provide notice in writing to HMRC to request their agreement to notice being given late. The agent's email of 13 March 2020, to which HMRC had responded, had not made any such request in writing. The reference to an appeal to the Tribunal in that email could not, it was submitted be a mechanism for bypassing s49 TMA 1970.

27. HMRC submitted that the appeal should not be reinstated as this would result in prejudice to HMRC, given that the request for reinstatement was made very close to the hearing and given the public interest in finality and efficiency in litigation.

28. HMRC submitted that, if the appeal were to be reinstated, this tribunal had no jurisdiction to hear an appeal against the corporation tax PLN as Mr Talati had not first appealed the PLN to HMRC as required by s49D TMA 1970.

29. HMRC submitted that the correspondence to them regarding appeals had referred only to the assessments; there had been no reference to the penalties levied on the company nor to the PLNs issued to Mr Talati. HMRC had written to Mr Talati's agent stating that they did not consider that there had been any appeal against the PLNs or the company penalties. That statement had not been contradicted. Although Mr Talati's agents had indicated that a request for a review had been sent by another consultancy firm, that letter had never been received by HMRC. No copy of the letter, or any proof of postage, had been provided by Mr Talati or his agents.

30. Without a valid appeal to HMRC it was submitted that no appeal could be made to the Tribunal (*Thuishyanthan* [2016] UKFTT 1986 (TC)) and, as such, if the appeal is reinstated it should be struck out under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (the "FTT Rules") on the basis that the Tribunal has no jurisdiction to hear the appeal.

Submissions on lateness

31. HMRC submitted that the correct approach to be taken with regard to the late appeals is the three stage approach set out in *Martland* [2018] UKUT 0178 (TCC) (“*Martland*”), which requires that the First-tier Tribunal first establish the length of the delay, establish the reasons why the default occurred and then evaluate all of the circumstances of the case in a balancing exercise.

32. HMRC submitted that the deadline for appealing in the case had been set when HMRC offered reviews of the VAT PLN and s61 decision on 29 August 2017. HMRC submitted that there had been no request for a review and, therefore, s83G VATA 1994 meant that the deadline for the appeal to be made to this Tribunal was 30 days from 29 August 2017. The appeals were, therefore, around 30 months late. Such a delay is both serious and significant, given that a three month delay was so considered in the case of *Romasave* (Property Services) Ltd [2015] UKUT 254 (TCC) (“*Romasave*”).

33. HMRC made the following submissions with regard to the reasons for the delay:

(1) The ill health of Mr Talati: HMRC did not dispute the evidence that Mr Talati had been very ill at the time the original decisions were made, and that he had continued to be unwell until at least June 2018. However, no evidence had been provided to explain the relevance of that ill health to the continuing delay between June 2019 and April 2020 when the appeal was made to the Tribunal. This explanation also did not explain why Hyfame was able to purport to lodge an appeal in September 2017, given that Mr Talati was the sole director of that company. If he was able to give instructions with regard to the company’s appeal, HMRC submitted that it was not clear why appeals against the PLNs and the s61 notice could not have been made at the same time.

(2) The death of the tax consultant. This was originally stated on appeal to have been in mid-2017 but was subsequently agreed to have been in late 2018. HMRC submitted that there was no clear reason why the death of the consultant should have delayed the making of the appeal which was, by late 2018, already considerably late. HMRC also submitted that the correspondence showed that, in June 2017, the consultant stated that he had not had any contact from Mr Talati or his agents for some time and there was no indication that he remained instructed by them after June 2017.

34. HMRC submitted that these did not provide a good explanation for a delay of 30 months in bringing an appeal. In particular, HMRC had written to Mr Talati in October 2018 setting out details of the amount owed and again in April 2019, warning Mr Talati that they would apply for a bankruptcy order against him.

35. In considering the balancing exercise, HMRC noted that the guidance in *Martland* was that the “balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected” (§45).

36. Further, the balancing exercise should take into account the public interest in the statutory time limits being respected, and the importance of finality in litigation. In *Kafeez Katib* [2019] 0189 UKUT (TCC) (“*Katib*”) the Upper Tribunal had noted (§17) that “as a matter of principle, the need for statutory time limits to be respected was a matter of particular importance to the exercise of [the First-tier Tribunals] discretion”. If permission was given for the appeals to be made late, HMRC would be prejudiced in that they would have to divert resources to defend an appeal which they were entitled to consider closed, especially given the significant length of the delay.

Discussion

Reinstatement

37. With regard to reinstatement of the appeal against the corporation tax PLN, HMRC argued that the appeal should not be reinstated as the application had been made very close to the hearing. However, I consider that the appeal was also withdrawn very close to the date of the hearing. The appeal was withdrawn on 26 April 2021; the hearing was less than three weeks later on 15 May 2021 and was an appeal in respect of an application to bring a late appeal. HMRC had already set out their grounds for objection on the basis of lack of jurisdiction to the corporation tax PLN appeal.

38. In the circumstances, I do not consider that HMRC would be prejudiced if the appeal against the corporation tax PLN were to be reinstated. I therefore allow the appeal against the corporation tax PLN to be reinstated.

Jurisdiction

39. S49D TMA 1970 provides that an appellant may notify an appeal to the tribunal (s49D(2)) but only if notice of appeal has been given to HMRC (s49D(1)).

40. S49 TMA 1970 provides that the tribunal may give permission for an appeal to be made late to HMRC where HMRC have not accepted an appeal made to them late.

41. No appeal to HMRC is required for an appeal to be brought against a VAT PLN or a s61 notice and so there is no question as to jurisdiction.

42. HMRC argued that, as no appeal had been made to them in respect of the corporate tax PLN, it was not open to this Tribunal to consider an appeal in respect of that PLN. The corporate tax PLN clearly states that Mr Talati should appeal to HMRC if he disagrees with the decision and that it is only if the appeal cannot be agreed that he would be able to request a review or appeal to the Tribunal.

43. I have considered whether the agents' correspondence with HMRC to appeal against the "assessments raised" should be regarded as an appeal against the penalties as well. I have concluded that it is not possible to so interpret the correspondence. HMRC's reply to the first such letter, dated 25 October 2017, clearly asks the agent to inform HMRC if their client wished to appeal penalties. This letter was also sent to the company, addressed to Mr Talati. The point was repeated in a letter from HMRC to the company, addressed to Mr Talati, dated 2 February 2018 offering a review of the corporate assessments. That letter also states that no appeal has been made against the penalties.

44. Given the clear statement from HMRC that the penalties had not been appealed, and the lack of any response to that statement, I do not consider that it can be argued that the request to appeal the "assessments raised" should be regarded as including the penalties. It will have been self-evident to Mr Talati and his agents from HMRC's letters that the penalties had not been appealed.

45. s49 TMA 1970 would allow this Tribunal to hear an application to make an appeal out of time to HMRC where HMRC has not agreed to accept a late appeal made to them. However, s49 TMA 1970 clearly requires that HMRC first refuse to accept the late appeal to this Tribunal before this Tribunal can consider the matter. In some cases, HMRC have accepted that the appeal to the Tribunal should be regarded as including an appeal to HMRC and the application has then been considered in that context. In this case, there has been no such acceptance by HMRC and nothing in the notice of appeal can be regarded as being a request that the appeal should be regarded as an appeal to HMRC. The appeal does not state that it is a request to be allowed to make a late appeal to HMRC.

46. As is well-established in case law, this Tribunal has no free-standing supervisory jurisdiction in respect of HMRC and therefore cannot consider whether it is, or is not, reasonable for HMRC not to have accepted this appeal as being a de facto appeal to HMRC.

47. Accordingly, as there has been no appeal to HMRC in respect of the corporation tax PLN, I conclude that this Tribunal does not have jurisdiction to consider the corporation tax PLN.

Lateness

48. 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 set out by the Upper Tribunal.

Length of the delay

49. Mr Talati did not dispute that there had been a serious and significant delay, although it was submitted that the delay was in the order of 24 months rather than the 30 months contended by HMRC. The correspondence referred to in that submission, a letter from HMRC dated 2 February 2018, offers a review of the corporation tax and VAT assessments issued to Hyfame. It makes no reference to the PLNs or s61 notice issued to Mr Talati which are the subject of this decision. As such, I do not agree that this letter provides any relevant date from which the lateness of this appeal can be measured.

50. As no other date was submitted to be relevant in measuring the delay, I find that the appeal should have been made within 30 days of the date on which the relevant decisions were issued and so an appeal should have been made within 30 days of 29 August 2017. The appeal was not made until 3 April 2020. This is two years and seven months after the deadline for appealing the decisions. That is, by any reckoning, a serious and significant delay.

Reasons given for the delay

51. Mr Talati's evidence was, in summary, that his ill health meant that he had left everything to his agents to sort out, and he believed that matters had been resolved such that he had no personal liability and there was only a small corporate liability. It was not until HMRC pursued the debt in 2020 that he realised that there had been no resolution. Those advising him had also not been well, and the tax consultant representing him had died, in 2018.

52. It is clear from the medical evidence provided that Mr Talati was very unwell in August 2017 and that he continued to be unwell until at least June 2018. I note also from the correspondence provided that Mr Talati's representatives were able to lodge appeals in respect of other matters whilst he was in hospital. Notably:

(1) On 28 April 2017 Mr Talati's tax consultant appealed a number of assessments issued to Hyfame, noting that the appeals were late because Mr Talati was in hospital. The consultant had, nevertheless, obviously received instructions to pursue the appeals against the assessments issued to the company. Mr Talati was the sole director of the company and so, presumably, gave the instructions to pursue the appeals.

(2) On 26 September 2017, Mr Talati's agents appealed the "assessments raised" on the basis that the assessments were estimated pending the outcome of an ongoing enquiry. Mr Talati's agents were therefore able to receive instructions from him to appeal the assessments at this time.

53. I note that HMRC provided reminders to Mr Talati and his agents which stated specifically that the penalties had not been appealed (25 October 2017, 2 February 2018).

54. Whilst ill-health can provide a reasonable explanation for a delay, I note that there has been no medical evidence provided after June 2018 nor any clear indication that Mr Talati was

unable to manage his affairs after that date. As such, I conclude that his ill-health does not provide a good explanation for the entire delay.

55. It was also submitted that the death in late 2018 of a tax consultant, Mr Smith, had contributed to the delays. HMRC contended that there was no evidence that Mr Smith was still acting for Mr Talati at that time.

56. Considering the evidence submitted, the correspondence shows that in June 2017 Mr Smith stated to HMRC that he did not know whether he was still engaged by Hyfame Limited as he had not heard from them in some time. On 25 July 2017 he wrote to HMRC to confirm that he had not been able to confirm a continuing engagement with Hyfame Limited and that his firm had suspended representation of Hyfame Limited. On 8 August 2017, the consultant called HMRC to ensure that they had received his letter as he wanted to ensure that HMRC did not think he was ignoring correspondence. In a subsequent letter, HMRC refer to meeting Mr Sidat on 11 August 2017, to discuss the assessments issued to Hyfame. There is no further reference to Mr Smith in the correspondence provided to the Tribunal until after the appeal was submitted in April 2020.

57. From the evidence provided, I do not consider that Mr Smith's death provides an explanation for any of the delay in appealing: the correspondence indicates that Mr Smith had been engaged by the company (Hyfame (UK) Limited) and had ceased to act for the company before the PLNs and s61 notice had been issued to Mr Talati at the end of August 2017.

58. The notice of appeal also states that a new representative, Mr Pancholi of HKP, had been engaged and it was believed that he had resolved the matter with HMRC. No correspondence was provided to indicate that any such resolution had been pursued, and Mr Talati's evidence in the hearing was that Mr Pancholi had not taken on the case. As such, the delay cannot be attributable to any actions or lack of action by Mr Pancholi.

Evaluating all of the circumstances

59. As set out above, I do not consider that Mr Talati has established that his ill-health provides a good explanation for all of the delay in appealing. Similarly, the death of Mr Smith also does not provide an explanation for the delay in appealing.

60. To the extent that the delay arose because Mr Talati relied on his agents, as he says that he left everything to his agents to sort out, I note that the Upper Tribunal in *Katib* has made it clear that "[it] is precisely because of the importance of complying with statutory time limits that, when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant" (§57).

61. Mr Talati believed that he had been told that there was no liability and believed everything had been resolved with HMRC. However, HMRC had written to him personally in April 2018 confirming that they would take action to collect the taxes due. They wrote again, to Hyfame at Mr Talati's address, in July 2018 advising that the assessments remained in place and that the agents' renewed attempt in June 2018 to appeal the assessments had not been accepted. HMRC also wrote to Mr Talati in October 2018 and April 2019 setting out details of the debt owed and advising that they would pursue a bankruptcy order against him.

62. Although Mr Talati now does not specifically recall receiving these letters, it was acknowledged that he was likely to have received them. In addition, in their letter of June 2018, the agents made it clear that they had visited Mr Talati and attempted to discuss the issues with him although they had not pressured him. I consider that these letters, if not the conversation with his agent, should have alerted Mr Talati to the fact that the matter had not been resolved. In considering all of the circumstances of the case, therefore, I do not accept that reliance on his advisers provides Mr Talati with a good reason for all of the delay.

63. As such, I do not consider that the reasons given for the delay in appealing provide any particular weight in favour of Mr Talati in evaluating all of the circumstances of the case. I also do not consider that Mr Talati's initial engagement with HMRC, and paying agents to represent him, provides any particular weight in his favour in this evaluation: these are actions which would be expected of a responsible taxpayer rather than something which has particular merit.

64. I have also considered the submissions that refusal of permission to appeal would result in Mr Talati's bankruptcy. However, no supporting evidence as to Mr Talati's financial state was provided. I note also that financial difficulties will often be a consequence of failure to comply with statutory requirements and, in the absence of supporting evidence, cannot conclude that this provides any significant weight in favour of Mr Talati in evaluating all of the circumstances of the case.

65. Neither party provided any clear evidence as to the merits of the case and it was submitted for Mr Talati that the Tribunal should not consider the merits of the case in evaluating the circumstances of the case.

66. There is a principle that litigation should be finalised as expeditiously as is reasonably possible, as noted in *Martland*. The statute sets out a thirty day time limit for appealing in this context. There is a purpose to this time limit: it provides HMRC with finality, so that they know whether or not they are expected to prepare for an appeal against the decision. 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.

67. 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).

68. Considering all of the circumstances of the case, particularly the lack of a good reason for the entire period of the delay, I do not consider that the potential effect on Mr Talati's financial position outweighs the importance of respecting statutory time limits in a case where the delay extended for more than two and a half years in total and there was a delay of over one and a half years in bringing the appeal after the last date of medical evidence as to ill-health.

Decision

69. The application for permission to reinstate the appeal against the corporation tax PLN is granted.

70. The application by HMRC to strike out the appeal against the corporation tax PLN on the basis that the Tribunal does not have jurisdiction in respect of that appeal is granted.

71. The application for permission to appeal the VAT PLN and s61 notice out of time is refused.

72. For the avoidance of doubt it should be noted that, if I had concluded that I had jurisdiction to consider the corporation tax PLN appeal, the application for permission to appeal that PLN out of time would have been refused for the same reasons.

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: 07 OCTOBER 2021