



Neutral Citation: [2025] UKFTT 00243 (TC)

Case Number: TC09436

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2024/00476

CORPORATION TAX AND VAT – Personal liability notices – permission to make late appeal

Heard on: 11 February 2025

Judgment date: 20 February 2025

Before

TRIBUNAL JUDGE MARILYN MCKEEVER

Between

TENZING WANGEL LAMA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr John Griffin of Trident Tax Limited, tax consultant

For the Respondents: Ms Siobhan Brown, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. The form of the hearing was V (video). All parties attended remotely on the Teams platform. The documents to which I was referred are a Hearing Bundle of 385 pages. Mr Lama attended the hearing, but did not make a witness statement and did not give evidence.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. I have considered carefully all the submissions and authorities referred to by the parties but in the interests of keeping this decision as concise as possible, I have not set them all out in detail.

THE APPLICATION

4. Mr Lama applies to the Tribunal for permission to make a late appeal (the Application).
5. The substantive appeal relates to Personal Liability Notices (PLNs) issued to the Appellant in relation to penalties issued to the company Gorkha Ltd (Gorkha/the company) which was wholly owned by the Appellant. Gorkha is now insolvent and in liquidation. The company penalties were issued under Schedule 24 Finance Act 2007 because of alleged inaccuracies in the company's VAT returns and corporation tax returns resulting from deliberate behaviour. The VAT inaccuracy penalty was £34,699.28 and the corporation tax inaccuracy penalty was £25,737.11. 100% of the penalties were transferred to Mr Lama under the PLNs on the basis that he was responsible for the inaccuracies.

THE FACTS

6. Mr Lama is the sole shareholder of the company. From 2005 until his resignation on 20 November 2017, he was the sole director of the company. Mr Lama's wife became the sole director on 20 November 2017. In a telephone conversation with an officer of HMRC on 10 March 2021 Mr Lama stated that he was still involved with the company.
7. Gorkha's business was a licensed Nepalese restaurant. Mr Lama and his family lived in a flat above the restaurant.
8. HMRC made three unannounced visits to the restaurant in May, September and November 2016 where they observed Mr Lama cashing up.
9. On 29 March 2017, HMRC requested information to check the VAT position of Gorkha. The company did not provide any information and HMRC issued a formal information notice under schedule 36 Finance Act 2008 on 3 May 2017. Penalties for non-compliance with the notice were issued on 9 June 2017. The company provided some of the information on 12 July 2017.
10. On 12 October 2017 HMRC wrote to Gorkha stating that in their view, sales, and in particular cash takings, had been understated. The basis for this was that:
 - (1) The takings on the days of the visits (when cashing up had been observed) was up to three times the average declared takings on the same day of the week over a six month period.
 - (2) The proportions of cash payments to card payments on the days of the visits were significantly more than the average of cash to card payments declared.

- (3) On one of the visits, HMRC made a test purchase in cash, which was not recorded in the business' records.
11. The letter went on to say that HMRC would be issuing assessments to recover the VAT and corporation tax they considered to have been underpaid and would also be considering penalties.
 12. On 13 June 2018, HMRC issued VAT assessments in the sum of £61,963.
 13. There is no copy of the corporation tax assessment, but HMRC's computer records show that a discovery assessment in the sum of £45,959 was issued for additional corporation tax.
 14. The assessments were not appealed.
 15. On 8 August 2018, HMRC issued the corporation tax penalty to Gorkha at its business address in Rectory Road, Worthing. The penalty of £26,737.11 was calculated on the basis of deliberate behaviour.
 16. On 27 August 2018 there was a devastating fire in Worthing Road which destroyed the restaurant and the flat above. Mr Lama and his family lost, not only their business, but their home and all their personal possessions too. They moved into a house in Cranleigh Road, Worthing which was owned by Mrs Lama.
 17. The corporation tax penalty assessment was reissued on 18 September 2018 and was sent to Gorkha at its registered office address in Victoria Road, Worthing which was the address of its then accountant. A copy was also sent to the company's then accountant.
 18. On 24 October 2018 the VAT penalty assessment was sent to the company at its Rectory Road address.
 19. On the same date, HMRC sent a PLN for the VAT to Mr Lama at the Rectory Road address, enclosing copies of the company's penalty assessments and information letters. On 25 October 2018, HMRC notified the company of the PLN at the Rectory Road address.
 20. On 5 November 2018, HMRC issued the corporation tax PLN to Mr Lama at the Rectory Road address.
 21. HMRC were made aware that the company had ceased to trade on 23 November 2018 which was after the issue of the penalty assessments, when the company applied to cancel its VAT registration.
 22. The final company accounts were micro-entity accounts for the period to 31 December 2017 and were submitted on 30 September 2018.
 23. On 21 February 2019, HMRC's records show that Mr Lama's address changed from Rectory Road to Cranleigh Road. I infer that this triggered the reissue of the PLNs to Mr Lama at the Cranleigh Road address. Both the VAT and corporation tax PLNs were reissued on 8 March 2019 and in each case, the PLN enclosed copies of the assessments and penalty notices issued to the company. The corporation tax PLN clearly stated the right to appeal and the 30 day time limit. The VAT PLN clearly stated the review and appeal options but put the time limit for responding was in the past. Presumably these were the original time limits stated in the October 2018 PLN.
 24. Mr Lama did not respond.
 25. On 19 June 2019, HMRC's Targeted Enforcement Recovery Unit (TERU) wrote to Mr Lama demanding payment of the £60,463.39 outstanding penalties. The letter stated that failure to pay could result in court action, seizure of goods or bankruptcy.

26. TERU wrote again to Mr Lama on 5 November 2019, at the Cranleigh Road address, to check they had his correct details and to obtain information about Gorkha and Mr Lama's financial position. Again, the letter mentioned the possibility of making Mr Lama bankrupt.
27. On 4 March 2020, TERU sent Mr Lama a further letter warning that if he did not pay the debt by 13 March, they would apply for a bankruptcy order.
28. On 10 March 2021, a TERU officer contacted Mr Lama on the telephone. Mr Lama indicated he was still involved with Gorkha. He was asked whether he had received the three letters from TERU referred to above. Mr Lama denied having received the letters. The officer referred to the company penalties which had been transferred to Mr Lama and asked how much the penalties were. Mr Lama said they were between £50,000 and £60,000. The officer asked whether he could pay the amount due, and Mr Lama replied that he could not. I infer that Mr Lama had received the letters and was aware of the penalties and the amount of the penalties.
29. Further reminders were sent, and "Warning of Bankruptcy" letters were sent to Mr Lama on 14 April 2022, 15 February 2023 and 3 May 2023. The letters invited Mr Lama to contact HMRC if he was unable to pay the debts due so that they could discuss options for payment.
30. A Bankruptcy hearing was scheduled for 4 October 2023.
31. On 25 September 2023, Mr Griffin contacted TERU. He had been newly appointed by Mr Lama to deal with the PLNs.
32. Following further correspondence between Mr Griffith and HMRC, the Appellant appealed to the Tribunal against the PLNs on 24 January 2024 and the appeal included an application for permission to make a late appeal.

DISCUSSION

33. The principles which the Tribunal should apply in considering an application to make a late appeal are set out in case law and in particular: *Denton & Others v T H White Ltd and Another* [2014] EWCA Civ 906, *Martland v Revenue and Customs Commissioners* [2018] UKUT 178 (TCC), *Romasave (Property Services) Ltd v Revenue and Customs Commissioners* [2015] UKUT 254 (TCC), *R & C Commissioners v Katib* [2019] UKUT 189 (TCC) and *R&C Commissioners v Websons (8) Ltd* [2020] UKUT 154 (TCC).
34. The principles to be derived from these cases are as follows:
 - (1) The starting point is that the statutory time limit applies unless the Tribunal is satisfied that it should grant permission to appeal late. There is no requirement for there to be exceptional circumstances.
 - (2) The Tribunal should adopt a three stage process in evaluating an application:
 - (a) Establish the length of the delay.
 - (b) Establish the reasons for the delay.
 - (c) Evaluate "all the circumstances of the case"
 - (3) The evaluation of all the circumstances of the case is a balancing exercise.
 - (4) The need for litigation to be conducted efficiently and at proportionate cost is particularly important. The need for finality and accordingly the need to enforce compliance with statutory time limits is also important.
 - (5) The Tribunal should consider the "balance of prejudice" should permission be given or refused.

(6) The Tribunal should not carry out a detailed evaluation of the merits of the underlying appeal, but can have regard to any obvious strength or weakness of the case as this goes to the question of prejudice.

35. I will now apply these principles to Mr Lama's case.

The length of the delay

36. The delay between the original issue of the PLN's and the appeal was 61 months (corporation tax) and 62 months (VAT). The delay between the reissue of the PLNs and the appeal was over 57 months. This is clearly a "significant and serious" delay and this was acknowledged by the Appellant.

The reasons for the delay

37. Mr Griffith put forward two main reasons for the delay.

38. First, Although Mr Lama now accepts that he should have appealed within 30 days, at the time, he mistakenly thought that the underlying corporation tax and VAT liabilities of the company would no longer be due because the company's business had been forced to close as a result of the fire. He also thought that the penalties would therefore fall away. Mr Lama stated in his Notice of Appeal that "I had also wrongly assumed in March 2019 (to the extent that I had even considered the position at all) that the PLN liabilities would also have fallen away or otherwise been extinguished by the loss of the company's business and my livelihood and home".

39. Even if Mr Lama had thought that was the case before March 2019, it is not credible that he continued to hold that opinion when he received the reissued PLNs in March 2019, after he had applied to deregister the company for VAT. It is still less credible that he continued to hold that view when he received a series of letters from TERU between June 2019 and May 2023, demanding payment and threatening bankruptcy. He was also contacted by telephone by the TERU officer.

40. Secondly, Mr Griffith submitted that in the aftermath of the fire, Mr Lama was in no fit condition psychologically or emotionally to address or consider the company's tax obligations. Further, the emotional and psychological trauma had a significant impact of Mr Lama's mental health which was capable of being a debilitating illness which could provide a good reason for the delay.

41. I accept that a physical or mental illness which prevents a person from dealing with his tax affairs is capable of constituting a good reason for the delay. However, I am not persuaded that there is such a reason in Mr Lama's case. I have a good deal of sympathy for Mr Lama and I do not underestimate the distress and trauma which the fire and the resulting loss of his business and home would have caused. However, I have not been provided with any medical evidence to suggest that Mr Lama's mental health was such that he could not deal with his financial affairs, or that any such disability continued for nearly five years.

42. On the contrary, there is evidence that Mr Lama was able to deal with his tax affairs. The company submitted its accounts to Companies House in September 2018 and deregistered for VAT in November 2018, soon after the fire.

43. Further, in correspondence with HMRC, Trident Tax said that Mr Lama had various employments in 2019 and was, in November 2023, employed by an accountancy firm as a trainee accountant. It is unclear when he began his training, but Mr Griffith suggested that Mr Lama had retired as a director of the company in 2017 as he was considering a different career and commented at the hearing that Mr Lama was now a qualified accountant. If Mr

Lama was capable of studying for an accountancy qualification, I consider that he must have been capable of dealing with his own tax matters.

44. In summary, I find that Mr Lama did not have a good reason for the delay in making his appeal. Even if the trauma and distress following the fire might have constituted a good reason initially, I do not accept that this reason continued for nearly five years. Nor do I accept that he could have sustained a belief that the penalties fell away on the closure of the business.

Evaluation of all the circumstances of the case

45. Ms Brown emphasised the need for finality and the need for litigation to be conducted efficiently and at proportionate cost. She submitted that should permission to appeal be given, HMRC would have to divert resources to defend an appeal which they were entitled to consider closed and that they and other taxpayers would be prejudiced by this diversion of resources.

46. Ms Brown also submitted that, to the extent one could properly take account of the merits of the case, Mr Lama's substantive case was weak.

47. Mr Griffith contends that to refuse the Application would deny Mr Lama access to justice and would cause significant prejudice as he would be unable to challenge the PLNs.

48. Mr Griffith also submitted that, should permission be granted there was a sound basis for appealing against the PLNs on the procedural grounds. He submitted that the penalty notices had not been properly served on the company and were therefore invalid, so the PLNs based on those penalty notices must fall away.

49. Mr Griffith referred to the telephone conversation between TERU and Mr Lama when Mr Lama indicated he could not pay the penalties. HMRC's website indicates that HMRC can provide help if a taxpayer needs extra support, and despite the fact HMRC knew Mr Lama could not pay, no help was offered. Ms Brown countered this by arguing HMRC were not responsible for offering help in relation to inability to pay, it was for the taxpayer to seek help if they needed it. I note that the Warning of Bankruptcy letters provided contact numbers for Mr Lama to call to seek help and websites where further advice and help could be found.

50. I have considered these submissions and all the other evidence and circumstances and have carried out the balancing exercise required by *Martland*. The delay in making the appeal against the PLNs was very long indeed; nearly five years. HMRC are certainly entitled to consider the case closed and use their resources for other matters after that length of time.

51. Even if the initial trauma and distress arising from the devastating loss of his business and home following the fire gave Mr Lama a good reason for failing to make the appeal at the time I do not accept that this continued throughout the length of the delay. I have noted that he was able to deal with other tax and business affairs within the following few months. Mr Lama was aware of the penalties and for the reasons set out above it is not credible that he thought the company penalties and the PLNs would fall away because of the loss of the business.

52. I recognise that if I refuse permission to appeal, it will deprive Mr Lama of the opportunity to challenge the PLNs which are a significant liability. I have not, and should not, consider the merits of the substantive appeal in any detail, but based on my findings above, I do not consider that Mr Lama's case is particularly strong, such that it should outweigh the other considerations.

DECISION

53. Having taken account of all the circumstances and carried out the required balancing exercise, I have decided to refuse permission to make a late appeal.

54. Accordingly, I dismiss the Application.

55. For completeness, I mention that Mr Lama asked HMRC to consider mitigating the penalty under section 102 TMA in the light of the real hardship that payment would cause. The exercise of HMRC's discretion is not within the jurisdiction of this Tribunal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

56. 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.

**MARILYN MCKEEVER
TRIBUNAL JUDGE**

Release date: 20th FEBRUARY 2025