



TC05341

Appeal number: TC/2016/01705

PROCEDURE – permission to notify appeal to tribunal out of time refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mr Ahmed Abid

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE SWAMI RAGHAVAN

Sitting in public at Fox Court, London on 19 July 2016

Further correspondence was sent in by HMRC on 9 August 2016 pursuant to the Tribunal's direction of 29 July 2016.

The Appellant did not attend and was not represented

Hellie Laie and Neil Nagle, HMRC Officers, for the Respondents

DECISION

1. The appellant, in a notice of appeal which was lodged with the Tribunal on 17
5 March 2016, applies for permission to notify his appeal to the tribunal out of time.
HMRC object to the application.

Proceeding the appellant's absence

2. The appellant did not attend at the time listed or contact the Tribunal in relation to
his non-attendance. The Tribunal's clerk contacted the appellant's agent, and was told
10 by a Mr Ahmed Nadeem that no hearing notice had been received, only a letter
seeking unavailable dates, and that the appellant wished to postpone the hearing.
Notices of hearing were sent by the Tribunal to both the appellant and his
representative Ahmed Zubairi of Ahmed Accountants on 31 May 2016. It appeared
unlikely to me that both Mr Abid and his agent had not received the notice and I was
15 satisfied in any case that reasonable steps had been taken to notify the party of the
hearing. Taking account that HMRC objected to the hearing being postponed and
were ready to proceed with the hearing, that I had before me the appellant's argument
contained in his notice of appeal on why permission to appeal out of time should be
allowed, and that there was also a bundle before me setting out history of the
20 correspondence that had passed between HMRC and the appellant's agent and the
appellant's arguments in the appeal I considered that it was in the interests of justice
to proceed with hearing the appeal.

Law

3. The decisions which the appellant seeks to appeal are contained within HMRC's
25 conclusions of its review of 30 April 2015 which were given in accordance with s49E
Taxes Management Act 1970 ("TMA 1970"). The relevant time limit as set out in
s49G(5)(a) and referred to as the "post-review period" is "the period of 30 days
beginning with the date of the document in which HMRC give notice of the
conclusions of the review...". Section 49G(3) TMA 1970 provides that "If the post-
30 review period has ended, the appellant may notify the appeal to the tribunal only if the
tribunal gives permission." That provision also applies in relation to National
Insurance Contribution decisions by virtue of Regulation 7 of the Social Security
Contributions (Decisions and Appeals) Regulations 1999.
4. Section 49G(3) TMA 1970 is analogous to the provision in s83G(6) ("an appeal
35 may be made after the period specified...if the tribunal gives permission to do so")
which was the subject of consideration by the Upper Tribunal in *Data Select Limited v
Commrs for HMRC* [2012] UKUT 187 (TCC) and where Morgan J set out at [37] that
it was correct to consider the overriding objective and all the circumstance of the case
and at [34] that as a general rule when a court or tribunal is asked to extend a relevant
40 time limit, it should ask itself the following questions:

"(1) what is the purpose of the time limit? (2) how long was the delay?
(3) is there a good explanation for the delay (4) what will be the

consequences for the parties of the extension of time? and (5) what will be the consequences for the parties of a refusal to extend time.”

5 5. Before considering these matters it is necessary to consider HMRC’s review letter of 30 April 2015 and the ensuing correspondence between that date and the time at which the appellant lodged his appeal in March 2016. From the bundle of correspondence and telephone attendance notes that were before me I find the following.

Decisions, review letter and further correspondence

10 6. Mrs Shah of HMRC issued the following decisions in late November / early December 2014 to the appellant and his agent: there were two letters dated 3 December 2014 dealing with NICs and PAYE on £30,000 earnings in 2008/9 and £15,000 earnings in 2009/10, and two letters dated 26 November 2014 (concluding that the appellant’s drawing from New Look Salon Ltd were £30,000, that his rental profit was £3,440 (2008/9) and that his drawings were £15,000 and additional sales takings were £25,000 in relation to his self-assessment for 2009/10). Each of the letters contained sections on what the appellant could do if he disagreed which included a reference to having the decision reviewed.

20 7. On 22 December 2014 the appellant’s agent replied stating his view that he had lodged objections and appeals against the assessments in his letter of 8 December 2014 and included further grounds of appeal. It was also requested that an independent inspector review the case.

25 8. On 17 February 2015 Ms Shah, of HMRC, having been prompted by an HMRC colleague carrying out the review, wrote to the appellant and the agent to give a “view on the matter” which set out Self-Assessment and s8 decision amounts for 2008/9 and 2009/10, explaining the basis of her calculations and referring to the lack of documentary evidence of loans the appellant maintained had been made by his sisters. It appears this letter was made pursuant to s49B TMA 1970 which required HMRC to notify the appellant of HMRC’s view on the matter. (Although the “view of matter” letter was sent outside the 30 day period referred to in s49B(5)(a) TMA 1970 which ended on 24 January 2015, noting that no objection was taken by the appellant, it was in my view sent within such longer period as was reasonable and therefore was sent within the “relevant period” for the purposes of s49B TMA1970). On 30 March 2015 Mr Zubairi thanked Mrs Shah for her letter and raised various queries in relation to her calculations. While he referred to her letter of 19 February 2015 I find that on the balance of probabilities given the absence of any letter dated 19 February 2015 before me, and the content of the letter that this was meant to refer to the letter of 17 February 2015.

40 9. As was apparent from copies of further correspondence sent in by HMRC after the hearing of the current application pursuant to the Tribunal’s request. HMRC having notified the appellant’s agent in a letter dated 19 February 2015 that the due date for review was 3 April 2015, telephoned Mr Zubhairi on 1 April 2015. He informed HMRC that he had more information to send, that he was away on holiday until 19 April 2015 and “to take two months”. On 2 April 2015 HMRC wrote to the appellant

and his agent extending the date to 21 April 2015. On 21 April 2014 it is apparent a telephone call took place between C Vallance of HMRC and the appellant's agent in which it was agreed that as the officer dealing with review was on sick leave, the review period was to be further extended to 5 May 2015.

5 10. On 30 April 2015 HMRC (Mrs Helen Durkin) sent a letter outlining her
conclusions of review to the appellant and copied to his representative, Ahmed
Accountants Ltd. The review considered closure notices in respect of income tax for
2008/9 and 2009/10 and section 8 Decisions in respect of NICs for the same years. It
10 upheld HMRC decision of NICs liability of £3,661.46 based on gross pay of £30,000
in 2008/9 and £15,000 in 2009/10 and varied the closure notices to account for such
amounts. In a section headed "what happens next" Mrs Durkin set out that if the
appellant want to appeal to the tribunal he had to write to the Tribunal Service within
30 days enclosing copies of the letter and the original decision that he disagreed with.
Details of the Tribunal Services website and phone number were provided.

15 11. On 5 June 2015 the agent is reported in a telephone attendance note prepared by
Mrs Durkin to have called her to advise her that he had been ill, that he had just
returned to work, that he had noted her conclusion letter and that he wanted to know
bottom line figure that his client was due to pay and to have this in writing. Mrs
Durkin told him she would be referring the file back to the decision maker.

20 12. The liabilities (as had been detailed in Mrs Shah's previous letters of 26
November 2014 and 3 December 2014) were again set out by Mrs Shah in her letter
of 22 June 2015. Mrs Shah also notified her intention to impose penalties (the notice
was issued on 23 July 2015 although I note there was no indication from the
documents before me that the penalty had been appealed to HMRC or to the
25 Tribunal).

13. On 29 June 2015 the agent replied to HMRC raising several points as to why it
disagreed with Mrs Shah's calculations. She replied on 3 July 2015 drawing the
agent's attention to the review letter of 30 April 2015 letter and the "What Happens
Next" section which dealt with what action the appellant could take if he disagreed
30 with her conclusion. The letter then went on to comment on the various objections the
appellant had raised. No reply to this letter was received and on 25 August 2015 Mrs
Shah wrote to the agent again mentioning the 30 April 2015 letter, the 30 day deadline
and seeking confirmation of whether or not an appeal had been made to the tribunal.

14. Mr Zubairi replied on 3 September 2015, mentioning he had not been able to reply
35 sooner because of his health. He explained that in the agent's opinion while the
independent review had been presented to them and they had objected there was no
need to appeal "because various appeal had been lodged in the past which have not
been resolved as at today" but that an appeal was being lodged with the tribunal that
day "to be on the safe side". The letter made points relating to an affidavit provided
40 by the appellant's mother and said that the appellant was trying also to get an affidavit
from his sister. The copy appeal form that was enclosed with the letter stated in the
grounds for appeal section "These assessments are linked to an earlier assessment for
Tax Payable. Full details and documents were sent with this earlier appeal." In a letter

dated 9 September 2015 Mrs Shah noted Mr Abid had made a late appeal and replied to his queries. Mr Zubairi called her on 14 September to disagree the appeal was late and in a letter of 17 September 2016 summarised various correspondence and assessments that had taken place between 8 July 2011 and 9 September 2015. Mrs Shah in turn commented on the summary in her letter of 30 September 2015.

15. It appears from a chronology of correspondence subsequently set out by the appellant's agent in his letter of 17 September 2015 that the appeal was lodged with the tribunal on 3 September 2015 (the reference in that chronology to 3 December 2015 is obviously incorrect given the date of the letter and must have been meant to refer to 3 September 2015 given the following entry is 9 September 2015). It transpired from HMRC's enquiries with the tribunal service on 22 December 2015 that the appeal was not notified to HMRC in the usual way but sent by the Tribunal back to the agent on 29 September 2015 as no decision was included with the appeal and no grounds provided. This information was relayed to the appellant's agent in a letter of the same date. He replied on 28 December 2015 categorically rejecting that any letter had been refused from the tribunal service refusing the appeal and setting out various reasons for the appeal and on 5 January 2016 asked whether this had been sent on to the tribunal and also whether an independent review had been arranged. Mrs Shah's response of 5 January 2016 enclosed a copy of the 30 April 2015 letter and asked him to communicate directly with the tribunal service. Having checked on 3 February 2016 that no appeal had been lodged, Mrs Shah wrote again on 1 March 2016 to say that, no appeal having been re-submitted the appeal was being treated as settled by agreement.

16. On 3 March 2016 Mr Ahmed Nadeem telephoned Mrs Shah to tell her that he was dealing with the case as Mr Zubairi had not been well. Mr Nadeem said he would resubmit the appeal application to the tribunal. In a subsequent call it appears he could not find anything in his file about the tribunal's appeal application. On 7 March 2016 he wrote requesting a copy of the notice of decision in response to which Mrs Shah sent him a copy of her letter of 17 February 2015.

17. The appeal was lodged on 17 March 2016. The grounds were stated as follows:

"HMRC have taken money banked in person bank account less some identified deposits as the extra income, but have failed to take into account other identified deposits. From these incorrect figures they have extrapolated a self

employed income which is incorrect. HMRC have arbitrarily increased rental income by £1202."

18. The section of the form which invited reasons as to why the appeal was made or notified late referred to the following explanation which I consider further below in the discussion:

"We were waiting for the notice of decision from HMRC, which was never received. When we asked HMRC to provide this they gave us a copy of their "view of the matter" which issued on 15 February 2015."

Discussion

19. Taking the questions posed by *Data Select* and first the purpose of the time limit, as was observed in relation to determinations by HMRC it is undesirable to re-open matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed or settled.

20. The length of delay was just over eight and half months - the appeal ought to have been notified to the tribunal on 30 May 2015 but was not filed until 17 March 2016.

21. In terms of the whether there is a good explanation for the delay I am not persuaded that there was. The appellant's explanation refers to having to wait for a notice of decision from HMRC but only having received a copy of HMRC's "view of the matter". Read in the context of the train of correspondence between the parties this appears to relate to the fact Mr Nadeem had in his letter of 7 March 2016 asked for a copy of the notice of decision but rather than getting the original decisions had received a copy of Mrs Shah's 17 February 2015 letter. However various earlier correspondence from Mr Zubairi (letters dated 22 December 2014, 30 March 2015 and 29 June 2015) indicates that the agent had already received the notices of decision, the 17 February 2015 letter and the conclusion of review letter of 30 April 2015. The fact that despite receiving the letters the agent was not able to find them, while pointing to deficiencies in the agent's file management and retrieval processes as they applied to this matter, may give an explanation for why the appeal was late but it is certainly not a good one for why the appeal was filed late.

22. I have also noted Mr Zubairi's correspondence which disputes him having had the notice of appeal he filed in September being returned and considered whether this would provide a good explanation for the period which followed. In my view it does not. An agent providing representation to taxpayers ought to have been well aware of the relevant requirements involved in filing an appeal with the tribunal; that appellants are required under Rule 20 of the Tribunal's Rules to provide grounds of appeal, and further that it would not be sufficient to refer as was the case here to matters and documents which the tribunal would not have access to. Mr Zubairi cannot therefore have reasonably expected that an appeal form which did not contain grounds would be accepted as an appeal by the tribunal. In any case in relation to the period following HMRC's letter of 22 December 2015 which had indicated the problems with the appeal there is no indication that the appellant sought to clarify with the tribunal what had happened to the appeal form that he had sought to file in September but continued to correspond with HMRC.

23. Although I note there are references in the correspondence to Mr Zubairi having been ill, the gaps in responding to HMRC's letters do not indicate that any illness impacted significantly on his ability to deal with the appellant's affairs or to be able to file an appeal with the tribunal sooner than he did. Even if Mr Zubairi had only returned to work on 5 June 2015 he would still have been in a position to file an appeal with the tribunal so that it was weeks rather than months late, and in any case other persons within the agent ought to have been able to handle the appellant's affairs even if Mr Zubairi was not available. As indicated by his letter of 3 September 2015 it appears to me that there was some confusion on the agent's part as to

distinction between appealing to the HMRC and the separate need to appeal to the Tribunal – while that may serve to explain in fact the reason for the delay up to that point it does not provide, in my judgment, a good explanation.

5 24. The remaining questions of what will respectively be the consequences for the parties of an extension of time and the consequences for the parties of a refusal to extend time entail balancing the prejudice to HMRC in not having finality in being able to close its books on a matter, and the prejudice to the appellant in not having the opportunity to argue the merits of his appeal. As to the prima facie merits having considered the correspondence there appears to be little in the way of documentary evidence referred to which would suggest that the appellant might readily displace HMRC's assessment of self-employment income and rental income. While I appreciate that part of the appellant's case that HMRC's assumptions as to relevance of deposits made into personal bank accounts are incorrect will rely on oral evidence from relatives and friends so it could not be ruled out that a tribunal persuaded by such evidence might reduce the assessments this is certainly not an appeal where the prospects of success can be said to be high. The balance of prejudice between the parties does not point clearly towards the appellant and that factor coupled with the lack of any good explanation for the not insignificant delay of just over eight and half months, means that it is fair and just in my judgment to refuse permission to appeal out of time in this matter.

25. The appellant's application for permission to appeal out of time is accordingly refused.

26. 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.

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**SWAMI RAGHAVAN
TRIBUNAL JUDGE**

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RELEASE DATE: 24 AUGUST 2016