[2018] UKFTT 117 (TC)

TC06374

Appeal number: TC/2017/02126

INCOME TAX – application to strike out appeal – application upheld

FIRST-TIER TRIBUNAL
TAX CHAMBER

JULIANA HARROLD **Appellant**

- and -

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

TRIBUNAL: JUDGE TONY BEARE

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 27 February 2018

Mr J Vyse of Pearl Lily & Co for the Appellant

Mr M Priestley, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This decision relates to an application by the Respondents for a direction under Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") that the proceedings under the appeal number referred to above should be struck out. Under Rule 8(3)(c) of the Tribunal Rules, I have the power to strike out the relevant proceedings if I believe that the Appellant has no reasonable prospect of success and, if that is my belief, it would not be fair on either of the parties to this appeal for me to allow these proceedings to continue.

2. This is a very unfortunate case. The background to it is that the Appellant did not discharge her tax liabilities for a number of years and was consequently made bankrupt. By the present action, she seeks to challenge a number of the tax debts that were the cause of her bankruptcy. However, her bankruptcy trustee, Mr A J Whelan of WSM Marks Bloom LLP, has declined to proceed with the action.

3. I have sympathy for the Appellant's predicament. Mr Vyse made it clear that she and her family are in a parlous state financially and that she sees these proceedings as an opportunity to challenge some of the debts that have led to her bankruptcy.

4. However, despite my sympathy for the Appellant's position, I agree with the Respondents that these proceedings have no reasonable prospect of success and I therefore uphold the application to strike them out.

5. There are two reasons why I consider that the Appellant's appeal has no reasonable prospect of success.

6. The first and main reason is that it is clear from both the provisions of the Insolvency Act 1986 (the "IA") and a number of cases that were drawn to my attention by the Respondents that, as a person who has been the subject of a bankruptcy order, the Appellant has no standing to pursue any appeal against the Respondents. Instead, that is solely a matter for her trustee in bankruptcy. This is the case even though the Appellant has now been discharged from the bankruptcy.

7. The provisions of the IA that are material in this regard are as follows:

   (a) Section 283, which provides that a bankrupt's estate comprises all property belonging to or vested in the bankrupt at the commencement of the bankruptcy;

   (b) Section 436, which defines "property" as including things in action;

   (c) Section 306, which provides that a bankrupt's estate vests in the trustee in bankruptcy immediately on his or her appointment, without the need for any conveyance, assignment or transfer; and

   (d) Section 281, which provides that, where a bankrupt is discharged, the discharge has no effect on the functions of the trustee in bankruptcy

(so far as they remain to be carried out) or on the operation, for the purposes of carrying out those functions, of Part IX of the IA.

8. In addition, I am bound by the Court of Appeal decision in *Heath v Tang* [1993] 4 All ER 694, which makes it clear that, following the vesting of a bankrupt's estate in the bankrupt's trustee in bankruptcy, a bankrupt is not entitled to bring an action to challenge the debts which are enforceable against the bankrupt's estate.

9. Although that decision related to an undischarged bankrupt, it is clear from the terms of Section 281 IA mentioned above that the mere fact that a bankrupt has been discharged does not change the position on this point. Indeed, the Respondents directed me to the Special Commissioners' decision in *Ahajot (Count Artsrunik) v Waller (Inspector of Taxes)* [2004] STC (SCD) 151, where the same outcome occurred in relation to a bankrupt who had been discharged.

10. So it is clear that the Appellant does not have standing to pursue these proceedings. That can be done only by her trustee in bankruptcy and the latter has declined to do so.

11. The above alone is sufficient reason for concluding that the Appellant has no reasonable prospect of succeeding in these proceedings.

12. However, there is an additional reason for reaching that conclusion and this is that the Appellant has produced no evidence that she has in fact made an appeal to the Respondents in respect of any of the relevant tax years of assessment or indeed that, with the possible exception of an appeal against the application of penalties and surcharges for the late payment of income tax and national insurance contributions, even if she had not become bankrupt, she would have had a right to make any such appeal.

13. In relation to the first point mentioned in paragraph 12 above, no evidence has been adduced to show that an appeal in respect of any of the tax liabilities has been made to the Respondents under Section 31A of the Taxes Management Act 1970 (the "TMA 1970"). Instead, the notice of appeal to the Tribunal appears to confuse the Appellant's desire to challenge the bankruptcy order with an appeal to the Respondents to challenge the imposition of the taxes in question. For example, section 3 of the notice of appeal to the Tribunal states that the amount of tax, penalties and surcharges which are the subject of the appeal are "IN EXCESS OF £28,817" – and that figure is the amount of the outstanding liabilities that led to the petition for bankruptcy – and that the Respondents concluded their review on 14 April 2014 – which was in fact the date of the bankruptcy order, as opposed to any review by the Respondents.

14. In addition, no evidence has been adduced to show that the Respondents have made any enquiries, amendments or other formal decisions in relation to the tax years of assessment in question. Instead, it appears that the tax liabilities which the Appellant now seeks to challenge by these proceedings have all arisen, directly or indirectly, from the self-assessment tax returns that the Appellant has herself submitted. It would seem that all that has happened is that the Appellant submitted her

self-assessment tax returns and then failed to pay the tax liabilities that resulted from the information in those returns.

15. So, whilst the Appellant may feel that the Respondents should have taken action against her sooner than they did, and so prevented the liabilities from reaching their present level, there would seem to be no decision by the Respondents against which the Appellant has actually appealed.

16. As for the second point mentioned in paragraph 12 above, leaving aside the penalties and surcharges for late payment of income tax and national insurance contributions, which amount to a very small portion of the overall liabilities and in respect of which the Appellant might well have been time-barred from making an appeal in any event, even if the Appellant had not become bankrupt, she would have had no right to appeal against the tax liabilities in question because they arose from her self-assessment return. The rights of appeal set out in Section 31 of the TMA 1970 are circumscribed – the Respondents need to have amended a self-assessment return, issued a closure notice or made an assessment which is not a self-assessment – see Section 31(1) TMA 1970. So it is not open to a taxpayer to make an appeal against her own self-assessment return. Instead, the correct approach in this case would have been for the Appellant to have filed an amended self-assessment return within the time frame specified in the legislation.

17. For the above reasons, I hold that the proceedings under the appeal number referred to above are hereby struck out.

18. 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 Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 7 MARCH 2018