



**TC06922**

**Appeal number: TC/2013/06235**

***PROCEDURE – Appeal struck out for failure to comply with directions –  
Late application for reinstatement – Bankruptcy order made against the  
Appellant – Whether the Appellant has standing to pursue the appeal***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SHARON HORSLEY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER**

**Sitting in public at Taylor House in London on 19 September 2018**

**The Appellant in person**

**H Davies, Presenting Officer, for the Respondents**

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## DECISION

### **Introduction**

1. The Appellant applies to reinstate this appeal, which was struck out by a direction of the Tribunal released to the parties on 19 November 2014.

### **Background**

2. In a letter to the Appellant dated 8 April 2011, HMRC stated that they had information that she had disposed of properties other than her main home, which she had apparently not declared for tax purposes. The letter requested the Appellant to provide information in relation to these properties.

3. On 9 June 2011, HMRC issued an information notice to the Appellant to obtain this information.

4. On 2 September 2011, HMRC imposed on the Appellant a £300 penalty for failure to comply with that information notice.

5. On 29 November 2011, HMRC further imposed on the Appellant daily penalties totalling £870 for failure to comply with that information notice.

6. Under cover of a letter of the same date, 29 November 2011, HMRC issued to the Appellant assessments to tax in respect of tax years 2002-03 to 2006-07 inclusive. The covering letter explained that HMRC had concluded that the Appellant had been running a business but had not informed HMRC of this fact, and that she had disposed of two properties in 2004-05 and 2005-06 in respect of which she had not paid capital gains tax.

7. In a letter to HMRC dated 30 August 2013, the Appellant requested that the 29 November 2011 assessments be reduced, on the following grounds. For a number of years she had suffered from depression. She had considered that correspondence received from HMRC might have been a scam. She suffered from dyscalculia and had difficulty understanding tax affairs. HMRC held incorrect historical residential information for her. She had now filed her tax returns for 2008-09 to 2011-12.

8. On 2 September 2013, the Appellant commenced the present appeal proceedings. The notice of appeal included an application for permission to appeal out of time.

9. There ensued correspondence between the parties and with the Tribunal. On 9 January 2014, HMRC sought to clarify which decisions the Appellant was seeking to appeal against, noting that some items listed by the Appellant were non-appealable. HMRC requested a stay of the appeal to enable this to be established. The Tribunal directed that the appeal be stayed until 9 April 2014.

10. The Appellant subsequently requested an extension of this stay, stating that an accountant was now dealing with these issues and that it would take slightly longer to comply.
11. On 2 May 2014, the Tribunal asked the Appellant to confirm the date until when she was requesting an extension of the stay.
12. On 6 June 2014, the Tribunal requested the Appellant to notify the Tribunal within 14 days how she wished to proceed with the appeal or whether she wished to withdraw it.
13. In a direction dated 29 October 2014, the Tribunal directed that unless the Appellant within 14 days confirmed that she intended to proceed with the appeal, it would be struck out without further reference to the parties.
14. In a direction dated 19 November 2014, the Tribunal struck out this appeal. That direction noted that the Appellant could within 28 days apply to have the appeal reinstated.
15. On 5 June 2015, an order of the High Court adjudged the Appellant bankrupt.
16. In an e-mail to the Tribunal dated 7 August 2017, nearly 3 years after this appeal had been struck out, the Appellant requested that the appeal be reinstated.
17. On 17 January 2018, the Tribunal requested the Appellant to provide certain additional information in relation to that application by 23 February 2018. The Appellant responded to this request on 22 February 2018.
18. On 23 April 2018, HMRC objected to the Appellant's request for reinstatement, stating that no reasonable excuse had been provided for the late application.
19. On 9 August 2018, the application for reinstatement was listed for an oral hearing before the Tribunal on 19 September 2018.
20. In letters to the Appellant and the Tribunal dated 23 August 2018, the HMRC representative stated that in the course of her preparation for the hearing, it had come to her attention that the Appellant had been made bankrupt. She stated that the HMRC view was that the rights of appeal now rested with the trustee in bankruptcy, and that the reinstatement application therefore could not proceed.
21. On 4 September 2018, the Tribunal advised the parties that the 19 September 2018 hearing would not be cancelled, and that both parties could make submissions at the hearing on the effect of the Appellant's bankruptcy.
22. The hearing was held as scheduled on 19 September 2018. At that hearing, the Tribunal had before it two bundles entitled "HMRC's list of documents" and "HMRC's list of supplementary documents" respectively. The latter included more recent correspondence of the parties, up to 17 September 2018. At the hearing the Appellant also provided additional documents, and the Tribunal directed HMRC to

submit further information after the hearing. Further material was subsequently submitted by HMRC, to which additional material was submitted by the Appellant in response.

23. A considerable amount of material has now been placed before the Tribunal. In this decision, only that material which is relevant to the Tribunal's decision is referred to.

### **The effect of the Appellant's bankruptcy**

24. HMRC contend as follows. The Appellant was made bankrupt in June 2015. As the appeal was made in November 2013, all decisions that could be subject to that appeal would have vested in the trustee in bankruptcy, pursuant to s 283 of the Insolvency Act 1986. Reliance is placed on *Heath v Tang* [1993] 1 WLR 1421 ("*Heath*"). The fact that Appellant was discharged from bankruptcy has no effect on this position. Reliance is placed on *Ahajot (Count Artsrunik) v Waller (Inspector of Taxes)* [2004] STC (SCD) 151 ("*Artsrunik*"). The Appellant therefore does not have a personal interest in the appeals and lacks the legal standing to appeal to the Tribunal. The period between the conclusion of the compliance check in November 2011 until the Appellant was made bankrupt in June 2015 spans three and a half years, and in this period she had ample opportunity to challenge any appealable decisions relating to that compliance check. The submission of the appeal in August 2013 shows that she was aware of the decisions relating to the compliance check well in advance of being declared bankrupt. This is supported by a 30 August 2013 letter attached to her appeal stating that she was seeking a stay in bankruptcy proceedings in order to allow time for the appeal to be dealt with. The bankruptcy hearing was delayed until June 2015 to enable her to do this.

25. The Appellant states as follows. HMRC petitioned for her bankruptcy in January 2013. In March 2013, the initial hearing for the bankruptcy petition was adjourned. In February 2015, HMRC reinstated the petition for her bankruptcy, and she was made bankrupt on 5 June 2015. She received an automatic discharge from bankruptcy in June 2016.

26. At the hearing, the Appellant also stated as follows. The bankruptcy is still being dealt with by the trustee in bankruptcy, who has not yet distributed any dividend. The Appellant has made a complaint against the trustee in bankruptcy, contending that he has a conflict of interests.

27. The Appellant has provided a copy of the bankruptcy order made by the High Court on 5 June 2015. The order states that one of the official receivers attached to the Court was by virtue of that order receiver and manager of the Appellant's estate.

28. The Appellant has also provided a letter from the Insolvency Service dated 6 June 2016, confirming that her discharge from bankruptcy took effect on 5 June 2016.

29. On its consideration of the material before it, the Tribunal finds as follows.

30. Section 283(1)(a) of the Insolvency Act 1986 provides that a bankrupt's estate comprises amongst other matters "all property belonging to or vested in the bankrupt at the commencement of the bankruptcy".

31. According to *Muir Hunter on Personal Insolvency*, Vol 1, Part III, para 3-621:

All things in action relating to property are included in the bankrupt's estate ... So, for example, even where the bankrupt and trustee are co-defendants in proceedings relating to property, the bankrupt has no standing to appeal against an adverse judgment ... In relation to tax assessments, the right of appeal against assessments would, it is submitted, normally be vested in the Trustee in bankruptcy by operation of law (see *Heath v Tang* (above), *Re Hurren (A Bankrupt)* [1983] 1 W.L.R. 183, and *Ahajot v Waller* [2004] S.T.C. 151). The Authors doubt the correctness of the decision to the contrary of H.H. Judge Purle QC in *Arnold v Williams* [2008] EWHC 218 (Ch); [2008] B.P.I.R. 247).

32. This paragraph of *Muir Hunter* goes on to refer to *Pathania v Adedeji* [2014] EWCA Civ 681, in which the Court of Appeal said at [15]-[16]:

[15] Where a bankrupt is commencing or pursuing a claim which he knows he does not have, the abuse of process in commencing or pursuing that claim is obvious. No claimant is entitled to sue on a right which he knows belongs to someone else. The abuse lies in knowingly pursuing a claim which, as presently constituted, is bound to fail. The abuse does, however, depend on actual knowledge of the lack of title to the cause of action, not on what he or she ought to have known.

[16] Nevertheless, where an action is commenced or continued after the cause of action has vested in a trustee in bankruptcy, the action does not abate and the position is capable of being regularised by the joinder of the trustee or by the taking of an assignment from him. Whether the court will permit that to happen will involve an exercise of discretion. It will be necessary to have regard to the interests of those likely to be affected, including the creditors in the bankruptcy. The court would be likely to stay the action until the position in the bankruptcy is clarified.

33. *Muir Hunter* also states at para 3-310.1:

In *Arnold v Williams* [2008] EWHC 218 (Ch); [2008] B.P.I.R. 247, HH Judge Purle QC held that where an assessment is raised against a discharged bankrupt in respect of tax due at the date of the bankruptcy order, the right of appeal under the statutory procedure is vested in the discharged bankrupt and not in his trustee. This conclusion, the inconvenience of which was acknowledged by the judge (*ibid.*, at [55]), appears to be at odds with the tenor of the comments of Harman J in *Re A Debtor Ex p. The Debtor v Dodwell* [1949] Ch. 236 at 244 on the subject of the debt owed by the bankrupt in respect of tax going back some seven years before his bankruptcy:

“[I]t has been recently agreed by the trustee with the revenue after long negotiations. With these the [bankrupt] is dissatisfied ... the complaint is an idle one. It is for the trustee and for him alone to settle with the Crown as with any other creditor, and ... the bankrupt has no right whatever to call his decision in question”

In *R. (on the application of Singh) v Revenue and Customs Commissioners* [2010] UKUT 174 (TCC); [2010] B.P.I.R. 933, Warren J doubted the correctness of the decision in *Arnold v Williams*, above.

“[T]he bankrupt has no standing to proceed with the appeal because he has no interest in the estate which has vested in the trustee and which comprises the only assets out of which the tax could be paid. If the bankrupt has no standing then the trustee must have standing otherwise the unacceptable result would be reached under which no-one had a right of appeal at all. The answer may be that an appeal has to be brought in the name of the bankrupt, but if that is so, the decision whether to do so is that of the trustee and not of the bankrupt and the bankrupt is under a duty to co-operate accordingly under s.333” (ibid., at [35]).

See further *Count Artsrunik v Waller* [2005] B.P.I.R. 82, a decision of the Special Commissioners applying *Re Hurren* and in which the Special Commissioners ruled that in relation to tax assessments for periods preceding the bankruptcy the right of appeal against such assessments was vested in the trustee in bankruptcy who had sole responsibility for determining the debts outstanding and for accepting or challenging them. There was no basis for departing from that general position since in the case in question the taxpayer had no personal interest in the appeals which did not directly concern his estate as vested in the trustee: no penalties had been imposed but, even if they had been, they would be debts provable in the bankruptcy and the discharge of the taxpayer meant that he had already been released from such debts (*Heath v Tang* [1993] 1 W.L.R. 1421 applied). This case was followed by the First-Tier Tribunal (Tax Chamber) in *Ali v Revenue and Customs Commissioners* [2015] UKFTT 464 (TC); [2015] B.P.I.R. 1348.

34. None of the authorities referred to in paragraphs 31-33 above that post-date *Heath* and *Artsrunik* were cited by the parties at the hearing. The Tribunal has given consideration to whether it should before issuing its decision give the parties the opportunity to make submissions on other authorities. The Tribunal has decided against that course. The question of the effect of the Appellant’s bankruptcy on her standing to bring this appeal was squarely identified to the parties prior to the hearing as one of the main issues that was to be addressed at the hearing. Both parties have therefore had a full opportunity to make whatever submissions they wish. In reaching its decision, the Tribunal does not place any reliance on authorities not cited by the parties, other than to take into account that some of these authorities arguably are less unfavourable to the Appellant than *Heath* and *Artsrunik*. The Tribunal is persuaded on the basis of the authority of *Heath* and *Artsrunik* that by operation of the law of

bankruptcy, the Appellant in this case no longer has any right to pursue an appeal before the Tribunal in respect of tax assessments or penalties in respect of periods preceding the bankruptcy, particularly given that the assessments were issued before the bankruptcy order.

35. The Appellant in this case, having now been discharged from bankruptcy, clearly has no intention of being liable to pay personally all of the assessments and penalties to which this appeal relates, in the event that the Tribunal were to allow the appeal to proceed and she was unsuccessful. By virtue of the bankruptcy, she has been released from those debts.

36. If any application were now to be made directly by the Appellant, rather than by the trustee in bankruptcy, that application would need to be made in the bankruptcy jurisdiction of the High Court, which made the bankruptcy order. In *Artsrunik* at [42] it was stated that if the Bankruptcy Court were to re-open the bankruptcy and request the Tribunal to determine the amounts of the assessments, then that court could refer the matter to the Tribunal, but that it is not for the Tribunal to determine the amounts without such a request.

37. It is the trustee in bankruptcy who has standing to bring an appeal before this Tribunal. The Tribunal proceeds on the basis that it has the power, in its discretion, to inform the trustee in bankruptcy of these proceedings, and to invite him to indicate whether he wishes to apply to take over and continue the present proceedings. The Tribunal has decided against that course for the following reasons. The appeal in this case was brought out of time. The application to reinstate the appeal was out of time. The trustee in bankruptcy must have been aware of the assessments and penalties, given that these formed the basis of the bankruptcy petition. The trustee in bankruptcy would presumably also be aware of the Tribunal appeal, given that the hearing of the bankruptcy petition was postponed to allow the Appellant to pursue that appeal. In any event, the bankruptcy petition was made on 5 June 2015, over 3 years before the hearing of the application to reinstate this appeal. If the trustee in bankruptcy has not made any application to reinstate within those three years, it is difficult to see why he would have an interest in doing so now. Furthermore, even if the trustee in bankruptcy were to make such an application now, he would need to persuade the Tribunal to give permission to reinstate the appeal, and would then need to persuade the Tribunal to give permission to appeal out of time. The merits of any such applications are not obvious.

38. For these reasons, the Tribunal refuses the Appellant's application to reinstate this appeal.

#### **Other matters**

39. Having refused the application to reinstate for the reasons above, the Tribunal does not need to deal with the other issues and matters that have been argued before it.

40. The Appellant has referred to personal matters, including medical issues affecting her and members of her family, and has claimed for instance that HMRC had admitted to her that they had made errors and that she should take action to have the bankruptcy annulled. She says that correspondence from HMRC was sent to the wrong address, and that two different UTRs were used by HMRC. She also says that she made considerable efforts to contact HMRC to resolve matters, and that she had been informed by HMRC that her tax liabilities had been waived. The omission of any discussion in this decision of these and other various matters raised by the Appellant is because they are not relevant to the decision above, and because the Tribunal has no basis for expressing any view on them given that the Appellant has no standing to bring this appeal. Failure to consider these matters should therefore not be taken as a lack of appreciation of the case that the Appellant was making.

41. None of these other matters alter the fact that a bankruptcy order was made against the Appellant on 5 June 2015. The Tribunal has found that by operation of law, for that reason alone, she has no standing to pursue this appeal. The merits of her appeal, no matter how strong they might be, cannot affect that. The Tribunal therefore refrains from discussing the other matters further.

### **Conclusion**

42. For the reasons above, the Appellant's application to reinstate the appeal is refused.

43. 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.

**DR CHRISTOPHER STAKER  
TRIBUNAL JUDGE**

**RELEASE DATE: 08 JANUARY 2019**