



TC06977

Appeal number: TC/2017/01862

PROCEDURE - HMRC barred from further participation in the appeal – whether to give summary judgment – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TRACY BAILEY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE Barbara Mosedale

Decided on the papers

DECISION

1. On 22 October 2017, Robin Moss Accountants Ltd submitted an appeal on behalf of Ms Tracy Bailey against various assessments for income tax (including interest) amounting to £11,327.23. On 26 October 2017, the accountants were told that the information submitted with the notice of appeal was insufficient as it did not contain a complete notice of assessment. On 13/11/17 the accountants provided the original decisions.

2. The Tribunal accepted this as a proper notice of appeal, albeit one that was now late. From the information contained within it I can ascertain that the appeal was against the following assessments:

TAX YEAR	ASSESSED TAX
9/10	2,203.44
10/11	2,353.12
11/12	2,521.26
13/14	628.41
15/16	2,234.48
TOTAL	9,313.43

3. The appeal was categorised as paper and duly notified to HMRC on 18 April 2017 by email to the address to which the Tribunal sends all correspondence to HMRC. HMRC was directed to provide their statement of case within 42 days.

4. HMRC were also informed that the appeal was lodged late and that if HMRC objected to the application to lodge the late appeal, they should say so no later than when they lodged their statement of case. If they failed to do so, they were informed the Tribunal would consider that they consented.

5. On 17 January 2018, HMRC applied for the case to be stayed pending ADR. On 12 February 2018, the Tribunal granted the stay to 6 June 2018, so that the new date for delivery by HMRC of their Statement of case was 6 June 2018.

6. It was not received on that date so on 16 July 2018 the Tribunal wrote to HMRC to require the statement of case (with an application for it to be admitted late) within 14 days. Again the email was sent to HMRC's usual email address. The Tribunal did not receive a reply.

7. On 15 September 2018, I issued a direction under Rule 8(1) which stated that unless HMRC confirmed no later than 29 September that they intended to defend the appeal, they would be barred. This was again sent to HMRC at their usual email correspondence address. No reply was received.

8. On 2 November 2018, the Tribunal wrote to HMRC advising them that they were automatically barred with effect from 30 September 2018 and informing them of their right to apply within 28 days for the bar to be lifted. This order was again sent to HMRC at their usual email correspondence address and no response was received. On the same day, the appellant was asked if she had any representations she wished to make on whether the appeal should be

summarily determined in her favour. After a reminder letter from the Tribunal, the appellant's agent replied to say that she requested summary judgment on the basis that the assessments were baseless.

9. In the interim, on 15 October 2018, HMRC copied the Tribunal in on a letter they had sent to the appellant's representative on the same date. The author explained she had taken over the case from a colleague; she mentioned that she understood the appellant had withdrawn from ADR and would be asking the Tribunal for a stay. She made no mention of the unless order and appears to have been unaware of it.

10. Even more oddly, the Tribunal received another letter from HMRC on 7 December 2018 on this appeal. It made no reference to their being barred. It was a short letter, simply enclosing a letter HMRC had sent to the appellant on the same date. That letter was much longer. It appears to concern penalties charged to the appellant in relation to the assessments which she appealed. It made no reference to the fact that HMRC had been barred from defending the appeal against the assessments. It substantially reduced the penalties that had been charged on the basis, it appears, that HMRC accepted that the conduct was 'careless' rather than 'deliberate' and that therefore some of the penalties were out of time.

11. The penalties had never been subject of the appeal; indeed, there was nothing in the appeal file about them until receipt of this letter. It appears in effect that all penalties were cancelled bar those for 13/14 which were reduced to £117.82 and 15/16 which was reduced to £418.97.

Summary determination?

12. Barring a respondent raises an issue which does not arise when an appellant is struck out. That is because the appeal is brought, and must be proved, by the appellant. Rule 8(8) of the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules provides:

If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.

13. In other words, when HMRC is barred, the appellant may still be required to prove its case, or the Tribunal may simply allow the appeal ('summarily determine') without consideration of whether the appellant has proved its case.

14. So the question which arises when HMRC are barred, which does not arise when an appellant is struck out, is whether the appellant should still be required to prove its case or whether its appeal should simply be summarily allowed.

15. Reasoning from first principles, it seems to me that where the respondent has chosen not even to respond to the appeal, summary judgment in favour of the appellant is indicated. The failure to indicate that HMRC even wished to defend the appeal, let alone the failure to provide grounds on which they intended to resist the appeal, would indicate that HMRC have accepted the appeal as well-founded. In such circumstances, the Tribunal should proceed on that basis and simply allow the appeal. An analogy with the courts could be usefully drawn: a plaintiff which serves a claim which receives no defence is entitled to summary judgment.

16. Here, however, the Tribunal has HMRC's letters of 15 October and 7 December 2018.

17. The contents of the 15 October letter might indicate that the real reason HMRC did not provide its statement of case was some kind of administrative error rather than a positive decision not to defend the case. And neither letter indicates that HMRC considered the appeal well-founded. The first clearly thought the dispute was ongoing which was inconsistent with HMRC having decided the appeal was well-founded; the second actually stated that the assessments were made because (they alleged) the appellant was living over the business but failed to adjust the business expenses to reflect this private use of business assets.

18. Should I consider these letters as amounting to some kind of defence, and therefore require the appellant to prove her appeal?

19. I do not think so.

20. Firstly, I can only speculate as to why HMRC did not provide their statement of case. The officer who wrote the letter of 15 October was sent the notification of 2 November 2018 and yet, despite the invitation, did not apply to have the bar lifted. If HMRC did not choose to make the application, any indications that they may have had grounds to do so should be ignored.

21. Secondly, neither of these letters were received before HMRC were barred as HMRC were barred with effect from 30 September 2018. I do not consider it appropriate to consider representations by HMRC made after the date they were barred: had HMRC made the representations before they were barred, the matter would be different. But if I were to consider representations made after the date of barring, it would deprive the sanction of barring of all meaning.

22. I consider that I should disregard the letters of 15 October and 7 December. Therefore, this is a case in which no defence has been served. I consider that in the absence of any defence or grounds of defence, it is in accordance with justice to (a) admit the appeal out of time and (b) award the appellant summary judgment for the reasons given at ¶15. This appeal against the assessments listed at ¶2 above is therefore ALLOWED. The penalties were not the subject of this appeal and I make no determination in respect of them.

23. 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.

**BARBARA MOSEDALE
TRIBUNAL JUDGE**

RELEASE DATE: 13 FEBRUARY 2019