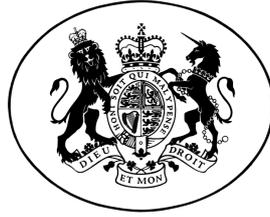


[2011] UKFTT 451 (TC)



**TC01303**

**Appeal number: TC/2010/32**

***STRIKE OUT – lack of jurisdiction***

**FIRST-TIER TRIBUNAL**

**TAX**

**F PERERA**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Mrs B Mosedale (Judge)**

**The matter was determined on the papers under Rule 29(3)(striking out without a hearing) following an opportunity for the appellant to make representations.**

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## DECISION

1. I struck out the Appellant's appeal on 20 April 2011 on the papers under Rule 8(2) on the grounds that the Tribunal had no jurisdiction in the dispute between Mr Perera and HMRC as the matters in dispute for which it did originally have jurisdiction had been settled by agreement between the parties.

2. I am able to strike out proceedings on the papers. Rule 29(3) provides that the Tribunal may dispose of proceedings without a hearing under Rule 8. I considered that it was appropriate to do so as the Appellant had been given two opportunities to explain in writing why he considered that the appeal should not be struck out.

3. Although I refer to the proceedings initiated by Mr Perera as an "appeal" strictly it appeared to be an application for leave to appeal out of time under Rule 20(4) as Mr Perera's notice of appeal appeared to be lodged out of time. This point is not material. An application for leave to appeal out of time is much "proceedings" for the purpose of the Rules as an appeal (see for example the use of the word "proceedings" in Rule 20(5)). Proceedings and not just appeals may be struck out under Rule 8. If the Tribunal does not have jurisdiction to entertain Mr Perera's appeal it must be the case it does not have jurisdiction to entertain an application for permission to make that appeal out of time.

4. There was some dispute as to when the appeal was actually lodged with the Tribunal as the Tribunal originally rejected it on grounds that Mr Perera's notice did not provide the information required in Rule 20. It is not material to question of jurisdiction. The Tribunal did accept his letter of 27 October 2009 as proper notice of an appeal.

5. In this letter he stated that he appealed:

- Notice of assessment dated 3 June 2008 in relation to tax year 2004/5;
- Notice of assessment dated 2 June 2008 in relation to tax year 2005/6;
- Conclusion by HMRC that there should be no change to the taxpayer's self assessment for 2006/7.

6. At the Appellant's request (and HMRC's concurrence) proceedings were stayed pending negotiations between the parties. On 12 March 2010 Mr Perera wrote to the Tribunal to notify it that he was withdrawing his appeal as "there has been progress made on reaching agreement on critical matters, however, there are other matters where I hope agreement can be reached with the Revenue." Mr Perera then retracted the withdrawal (with the consent of HMRC) and this was accepted by the Tribunal.

7. On 29 July 2010 HMRC notified the Tribunal that the matter had been settled under s 54 Taxes Management Act 1970. Mr Perera did not agree that his appeal had been fully settled, and stated in his letter of 22 August that there was a final point yet to be settled. He requested a further stay on proceedings.

8. HMRC wrote to the Tribunal on 18 January 2011 saying that the Appellant had agreed his appeal with HMRC and only requested his appeal to be reinstated when he became aware that HMRC planned to charge statutory interest in addition to the amount of unpaid taxes settled by agreement between the parties. They asked for the appeal to be struck out.

9. Mr Perera was asked for his representations, as the Tribunal is required to do under Rule 8(4) and indeed as is only just and fair. His reply of 21 January 2010 was:

“I agree with respondent/HMRC that all outstanding matters were agreed after 4 years of negotiation, however I will be producing evidence of what this agreement relates to i.e. it was an all inclusive settlement figure. I did not reinstate the appeal when “he became aware that statutory interest was due...” to use the words of the respondent/HMRC. In addition the respondent/HMRC incorrectly included payments of income tax not relating to the years concerned by passing off these payments as such.”

10. On March 1<sup>st</sup> HMRC reiterated their view that the appeal should be struck out as the only matter on which the parties now disagreed was Mr Perera’s liability to interest and this was a matter of which the Tribunal had no jurisdiction. They included their Statement of Case which (due to the numerous successive stays) had not previous been produced and this confirmed that it was an HMRC assessment for 2004/5, an HMRC amendment following a closure notice for year 2005/6 and his own self-assessment for 2006/7 against which Mr Perera had lodged his appeal.

11. The Tribunal replied in detail to Mr Perera and he was again asked for his representations why his appeal should not now be struck out as it appeared there nothing was left over which the Tribunal had jurisdiction. In particular he was asked if under s54(2) Taxes Management Act he had repudiated the agreement and if so to provide evidence of this as such repudiation must be in writing to HMRC within 30 days of the agreement.

12. In Mr Perera’s reply of 31 March 2011, he says “In your fourth paragraph you state that the subject matter of the appeal has been agreed and I can confirm that agreement was for £34,758.05”. He did not say that the agreement was repudiated within 30 days nor provide any evidence that he had (or wished to) resile from it. Nevertheless, it was clear he still disputed whether his liability to interest and tax in other years.

13. I struck out the proceedings for lack of jurisdiction on 20 April as stated above. Mr Perera asked for full written reasons

14. My reasons were that I was satisfied on the basis of Mr Perera’s letters that he had reached agreement with HMRC with regards the assessments for 2004/5 and 2005/6 and that these matters, although matters over which the Tribunal had had jurisdiction, were matters over which the Tribunal no longer had any jurisdiction because of the agreement. I was also satisfied that he had not repudiated the agreement as provided for by s54(2).

15. I considered that in so far as he disputed whether the agreement included his liability for interest or even tax for other years, this was a question of contract law and was one for determination by the County Court. In so far as Mr Perera disputed his liability to interest, this was not something over which the Tribunal had jurisdiction in any event. The Tribunal had no evidence that any assessment had been made on Mr Perera for any years other than 2004/5 and 2005/6. In so far as Mr Perera might be implying that he was in dispute with HMRC in respect of other years than 2004/5 and 2005/6, these years were not the subject of these proceedings and we would have no jurisdiction in respect of them unless (although he could lodge a new appeal in respect of an assessment relating to other years). And with regards 2006/7, the Tribunal has no jurisdiction where a taxpayer considers that a self-assessment is incorrect (s31(1)(d) Taxes Management Act 1970) as it seems Mr Perera did for this year: his remedy is to file a new self-assessment.

16. 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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**TRIBUNAL JUDGE**  
**RELEASE DATE: 6 July 2011**