



TC01337

Appeal number: TC/2011/00959

**FIRST-TIER TRIBUNAL
TAX**

RAKA ALI

Appellant

- and -

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

Respondents

TRIBUNAL: IAN HUDDLESTON (TRIBUNAL JUDGE)

Sitting in public at Belfast on 8 June 2011

Mr O'Reilly for HMRC

No-one appeared for the Appellant

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DECISION

The Facts

- 1 This appeal relates to the issue of a closure notice issued under Section 28(a)(1) and (2) of the Taxes Management Act 1970 in relation to Mrs. Ali's tax returns from the years ended 5 April 2004 and 5 April 2005.
- 2 After an investigation undertaken by HMRC, the profits of Mrs. Ali's business were uplifted, resulting in a net increase in turnover for the two years in question. With reference to the year ended April 2005, that increase was in the sum of £47,395, and the consequent increase in the tax liability assessable thereon was in the sum of £13,480.35.
- 3 The detail was advised to Mrs. Ali, or rather her agents, D.M.L. Turgot, by way of a letter dated 30 September 2009.
- 4 The closure notices themselves were issued, respectively, on the 27 October 2009 and 8 December 2009.

The Appeal

- 5 The Appellant did not appear in person, nor did her Representatives, to whom the Appeal Notice was sent.
- 6 The Tribunal elected, however, in the interests of justice to proceed pursuant to Rule 33 of the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal's Rules").

Decision

- 7 The assessments which resulted in the increase in turnover and therefore corresponding increase in tax were calculated by HMRC to best judgment. They were based, in the main, on the examination of the bank accounts of the taxpayer. In the appeal notice lodged by her advisers on the 1 February 2011, and previously, it had been suggested that the additional cash deposits to these accounts were private loans made to Mrs. Ali and statements signed by Mrs. Ali in the presence of a solicitor had been tabled as corroboration of those loans.
- 8 HMRC, however, disputed the loans and, accordingly, upheld the original assessment.
- 9 In relation to the appeal notice, I have a couple of observations:
 - a. in the first place, whilst it makes allegations against HMRC, it does not, of itself, establish the grounds of appeal upon which the Appellant is seeking to rely;
 - b. if, as it suggests, the assessment was not to best judgment, then the onus of establishing that clearly falls upon the Appellant and it is equally clear that, although

notified of the hearing, the Appellant did not appear and therefore presented no cogent evidence in support of her assertion that HMRC's assent was incorrect.

- 10 I do, however, have a more fundamental issue in that the decision to which the appeal relates is that which was issued by HMRC on the 8 December 2009. That letter included the usual paragraphs regarding the route of appeals, and specifically the request that a notice of appeal had to be lodged within 30 days of the decision letter.
- 11 According to the papers before me, there does not appear to have been a notice of appeal served within that period, and the one which was subsequently served by the Appellant's agents, itself was dated the 1 February 2011.
- 12 No clear reason was given for the delay on the face of the appeal notice. Rather, it appears it was not until enforcement proceedings were commenced that the appeal notice was served.
- 13 In the circumstances, therefore, I find that the appeal notice has been served out of time.
- 14 For those reasons this Tribunal therefore directs that the appeal be struck out.
- 15 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.

IAN HULDDLESTON

A handwritten signature in black ink, appearing to read 'Ian Huddleston', with a long horizontal flourish extending to the right.

TRIBUNAL JUDGE
RELEASE DATE: 21 July 2011

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