



TC01378

Appeal number TC/2010/05765

Refusal of application to set aside the Tribunal's decision to refuse to allow a late appeal in this matter – submissions having been received from the Appellant and HMRC in respect of the reasons for the late appeal and the merits of the case

FIRST-TIER TRIBUNAL

TAX

MRS SHOBHA BOHRA

Appellant

- and -

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

Respondents

TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)

Having read the submissions of the Appellant and HMRC

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DECISION

1. On 7 December 2010 the Tribunal heard an application by the Appellant for permission to make a late appeal. The Appellant did not attend the hearing and HMRC objected to the appeal. The Tribunal decided to refuse the appeal.

2. The Appellant sent a letter asking that the appeal be reheard and the Tribunal decided to treat this as effectively an application to set the Tribunal's decision aside.

The Law

3. The conditions for business asset taper relief are set out in paragraph 5 of Schedule A1 of the Taxation of Capital Gains Act 1992. Paragraph 5(2) states:

Where the disposal is made by an individual, the asset was a business asset at that time if at any time it was used, wholly or partly, for purposes falling within one or more of the following paragraphs-

(a) the purposes of a trade carried on at that time by that individual or by a partnership of which that individual was at that time a member.....

Background and Facts

4. On 20 May 2008 an enquiry was opened into the Appellant's tax return for the year ended 5 April 2007.

5. Included in the return was a capital gain on the disposal of a property. This included a deduction for business taper relief applied to the whole gain,

6. During the enquiry it was established that the Appellant had inherited the property at probate value on 25 October 2001 on her husband's death. The Appellant's late husband was a doctor and ran a medical practice from the property.

7. After Dr Bohra's death the East London and City Health Authority continued to run the surgery on a short lease until the closure of the surgery. The lease was finally surrendered by the Primary Care Trust on 31 March 2006 and the property was sold.

8. The rental income was shown as income from land and property on the Appellant's returns.

9. The Appellant is not a doctor.

10. On 5 August 2008 HMRC wrote to the Appellant and explained that business taper relief was not due prior to 6 April 2004.

11. To qualify as a business asset prior to 6 April 2004 the individual making the disposal had to personally have been trading from the property. A property let to a trader did not qualify for business asset trading relief.

12. The taper relief rules changed for periods of ownership on or after 6 April 2004 as a result of Finance Act 2003. For periods of ownership after 6 April 2004 a business asset includes an asset used for the purpose of a trade by anyone.
13. The Appellant's agent wrote to HMRC on 5 September 2008 and agreed that this was the case and that the period of ownership of the property needed to be apportioned between business and non-business use.
14. A revised computation was issued on 16 April 2009 showing a revised gain after the annual exemption of £83,678 which was an increase of £52,495 over the figure returned by the Appellant.
15. The Appellant's agent agreed this computation on 29 April 2009 and a closure notice reflecting the revised gain was issued on 13 May 2009 to the Appellant with a copy to her agent.
16. On 2 November 2009 a fax was received from the Appellant's agent requesting a review of the decision. This was 174 days after the issue of the closure notice and 144 days after the time limit for making the appeal had expired.
17. On 15 February 2010 HMRC wrote to the Appellant asking for reasons for the appeal being made late.
18. The agent replied on 15 April 2010 explaining that since further information had been obtained from the Primary Care Trust the Appellant had been seeking opinions from various schools of thought. Further the agent stated that the Appellant was distressed by her husband's untimely death in 2001.
19. HMRC did not accept these reasons and by letter of 18 May 2010 they stated that as Dr Bohra had died in October 2001 it was not acceptable as a reasonable excuse for late appeal. In order to apply to an independent tribunal the agent was advised to write to the Tribunal Service within 30 days of the date of the letter.
20. On 23 June 2010 the agent wrote to HMRC and informed them that they would shortly be making a late appeal.
21. Miss Thorn telephoned the agent to inform him that he needed to appeal to the Tribunal Service direct.
22. The application for a late appeal to be heard was finally lodged on 7 July 2010 more than a year after the closure of the enquiry and no reasonable excuse was offered for the long delay.
23. By letter dated 2 August 2010 the Appellant's agent was informed that arrangements had been made for the application for a late appeal to be heard on 29 September 2010. Together with the letter a notice was sent informing the agent that any request to postpone the hearing received more than 14 days after the date of the letter would go to a judge and it was unlikely that a late request for a postponement

would be granted unless the reasons for the postponement were compelling or the other party consented.

24. On 21 September 2010 the Tribunal Service received an email requesting a postponement of the hearing due to one of the tax members being ill and HMRC
5 agreed to the postponement. This was less than 14 days before the hearing.

25. On 20 October 2010 the case was relisted for 7 December 2010 and on the 19
November 2010 the Appellant's agent again requested a postponement due to the
illness of one member of staff and the absence for personal reasons of another.
HMRC objected to the postponement as it was again a late request and was the second
10 request for a postponement.

26. On 6 December 2010 the Appellant's agent faxed a letter to the Tribunals Service
which came from the outpatient's department of the Clementine Hospital confirming
an appointment for Mr Nathwani on 9 December 2010.

27. The Tribunal refused the request to postpone the hearing on the grounds that the
15 application was again made more than 14 days after receiving notice of the hearing; it
was the second request for a postponement; on neither occasion had the agent's
reasons been supported by documentary evidence and HMRC objected. There was no
medical evidence in respect of Mr Nathwani, only a letter informing him of an
outpatient's appointment.

20 28. The Tribunal heard evidence from Miss Thorn in respect of HMRC's objection to
the late appeal and agreed that the appeal had been made far too late with no
reasonable excuse for so doing. The Tribunal noted that the Appellant's agent had in
fact originally agreed to HMRC's proposed amendment to the tax return.

29. Permission to make a late appeal was therefore refused.

25 30. Further to the Appellant's request for the appeal to be reheard directions were
issued requesting the Appellant to make written submissions by 29 April 2011 setting
out the reasons for the late appeal, the reasons for failing to attend the hearing to
apply for permission to make a late appeal and the merits of the case.

30 31. The directions were finally fully complied with on 1 July 2011 and on 7 July
2011 HMRC objected to the application to set aside the decision to refuse a late
appeal on the grounds that no new evidence had been produced to support the
Appellant's contention that HMRC's original decision had been wrong.

Findings

35 32. No new evidence has been produced by the Appellant which alters in any way the
decision by HMRC which the Tribunal finds is correct and is as stated above at
paragraphs 11 to 14. The legislation in force before 6 April 2004 applies to the period
between this date and the date of Mr Bohra's death.

33. The Appellant's agent did not have a reasonable excuse for the late appeal and the Tribunal finds that her case had no merit.

5 34. The Appellant's agent postponed the first hearing application to make a late appeal less than 14 days before the hearing and failed to appear at the actual hearing without giving two weeks notice.

35. The application to have the decision to refuse a late appeal set aside is hereby refused.

10 36. 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: 5 AUGUST 2011

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