



TC01331

Appeal number TC/2010/02317

Permission to appeal out of time.

FIRST-TIER TRIBUNAL

TAX

JASWANT SINGH DIGPAL

Appellant

- and -

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

Respondents

**TRIBUNAL: GERAINT JONES Q.C. (TRIBUNAL JUDGE)
MRS SUSUAN HEWITT (TRIBUNAL MEMBER)**

Sitting in public at 83-85 London Road, Southampton on 24 November 2010.

Mr. Millett for the Appellant.

Mr Riordan, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. The appellant, Mr Diggall, seeks permission to appeal out of time against income tax assessments for the fiscal years 2003/2004, 2004/2005 and 2005/2006. The sole issue listed before us on 24 November 2010 was the issue of whether permission to appeal out of time would or would not be granted. If permission was granted then it was intended that, if necessary, any substantive issues would be heard at a subsequent hearing.
2. On 24 February 2010 a Notice of Appeal was issued with the Tribunal by new accountants, Jones Avens, who had been appointed by the appellant from 18 January 2010. The accountants acknowledged that the appellant's tax affairs were seriously in arrears.
3. Section 49 of the Taxes Management Act 1970 provides that the Tribunal may give permission to appeal out of time, but does not specify the matters to be taken into consideration upon such an application. In our judgement those matters are broadly the same as those which would be taken into account by a civil Court. Thus we must take into account what, if any, good reason is advanced for the appeals being late; whether the application for permission to appeal out of time, is opposed; the extent to which the appeal is likely to succeed if, at this stage, it is possible to form any proper but preliminary view on that matter; any prejudice to either party; and the extent of the lateness.
4. We say at once that in our judgement it is not possible for us to form any view, one way or the other, about the overall merits, if any, of any proposed substantive appeals. However, it is the appellant's case, as put forward by Mr Millett, the appellant lacks a complete set of accounting records from which correct figures and thus correct assessments could be produced. Thus, insofar as any preliminary view can properly be taken, it seemed to us that when Mr Millett acknowledged that any figures now put forward by the appellant would necessarily be incomplete or estimated (based upon non-documented information provided by the appellant), he was accepting that there would be significant difficulties for the appellant at any substantive hearing.
5. In so far as the substantial delay has caused any prejudice we recognise that it is delay that has probably been as prejudicial to the appellant as it will have been to HMRC. With the passage of time the appellant may find it increasingly difficult to locate documents and to give firm evidence about events that took place, in some instances, seven or eight years ago.
6. In this case HMRC opposes the grant of permission to appeal out of time, taking the view that no good reason has been put forward for the inordinate delay.
7. In the Grounds of Appeal it is said that the appellant may have an action for negligence against his erstwhile accountants, SBS Accountants. Again, that is a matter about which we can make no assessment and cannot comment. In the Grounds of Appeal it is contended that the appellant's tax liabilities should be substantially

lower than those estimated by HMRC in the face of the appellant's failure to provide returns or other relevant information.

5 8. Mr Diggall relied upon a statement of 9 November 2010 in support of this application. We have read it in full, albeit that he was not called as a witness. He says that until April 1997 his tax affairs were dealt with personally, with assistance from his brother. However, from April 1997 he asked Solent Accountancy Services to act as his accountant, notwithstanding that he knew that the principal of that firm, Caroline Adams, had no formal accountancy qualifications. The appellant says that his affairs remained with that firm until approximately 2005. The appellant says that he placed full reliance upon that firm and was not made aware of the fact that there were any difficulties with his tax affairs.

15 9. The appellant goes on to say that sometime in 2005 he discovered that Caroline Adams had left the country and so he moved his tax affairs to SBS Accountants. By that time an Inland Revenue enquiry was underway and the appellant says that he was told that Mr Patta of SBS was an expert in such enquiry work.

10. The appellant says that his tax affairs remained with SBS until January 2010 when he discovered that his tax affairs were not up to date and that tax assessments exceeding those which would be justified had appropriate figures been submitted to HMRC, had been issued.

20 11. At all material times there can be no doubt that the appellant had agents acting on his behalf, who, at the very least, held themselves out as providing professional services of an accountancy nature and certainly in respect of the appellant's tax affairs.

25 12. Although the foregoing background may engender some sympathy for the appellant it has to be remembered that it was not until HMRC issued a bankruptcy petition that the appellant took issue with the assessments against which he now wishes to appeal.

30 13. It is not disputed that the appellant, even if he was ill served by his erstwhile accountants and other professionals, plainly received the assessments and other notices relating thereto and could have challenged them or he could have challenged his accountants as to why he was receiving them. He did not do so. Instead, the appellant ignored his own tax affairs until such time as a bankruptcy petition was issued against him. Only then did he react in any way whatsoever. In our judgement that diminishes much of the case which the appellant seeks to put forward to the effect that he was the victim of incompetence or inactivity on the part of retained professionals.

40 14. The main issue upon an application for permission to appeal out of time, is whether the appellant has demonstrated that there are good reasons for the appeal to be out of time. In our judgement, the appellant has demonstrated none. In our judgement, the appellant knowingly ignored the various assessments and notices that he was receiving from HMRC and, ostrich like, buried his head in the sand instead of

being proactive and seeking to deal with his tax affairs including, if necessary, lodging appropriate appeals within due time.

5 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.

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15 **TRIBUNAL JUDGE**
RELEASE DATE: 15 JULY 2011

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