



**TC02080**

**Appeal number: TC/2012/00012**

*TYPE OF TAX – income tax – partnership – returns admittedly understated profit – amendment to self-assessment and assessments raised – not appealed for almost 4 years – whether permission should be granted to bring a late appeal – balancing exercise undertaken – held permission should not be granted – appeal struck out*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BANSONS (D BANSAL and J BANSAL)**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN WALTERS QC  
MICHAEL BELL ACA CTA**

**Sitting in public at Bedford Square, London on 31 May 2012**

**G. Sarwar, for the Appellant**

**Mark Ratcliff, for the Respondents**

## DECISION

1. The respondent Commissioners (“HMRC”) on 24 July 2007 issued a closure  
5 notice for the year ended 5 April 2005 together with an amended partnership  
statement. On that date HMRC also raised assessments for the three years ending 5  
April 2002, 5 April 2003 and 5 April 2004 for the purpose of making good tax and  
Class 4 National Insurance Contributions which the Inspector (Officer D. Barnes)  
considered ‘may have been underpaid by reason of the negligent conduct of Mrs  
10 Bansal (the second Appellant) in submitting partnership tax returns which Officer  
Barnes believed were incorrect. The amendment for the year ended 5 April 2005  
increased the partnership profit from £7,636 to £25,168 and the assessments charged  
additional profits of £25,974, £25,974 and £19,751 for the years 2001/02, 2002/03  
and 2003/04 respectively. The Tribunal finds that the amendment and the  
15 assessments were reasonable and made to Officer Barnes’s best judgment.
2. Officer Barnes’s letter dated 24 July 2007 contained information on how to  
make appeals against the amendment and assessments.
3. An appeal against the decisions contained in the letter dated 24 July 2007 was  
made to HMRC on 22 July 2011 and to the Tribunal on 29 September 2011 or 21  
20 December 2011 (both dates are on the Notice of Appeal document). The Notice of  
Appeal contained a request for permission to appeal outside the relevant time limit.
4. The Tribunal heard argument in relation to the appellants’ request for  
permission to appeal out of time. The request was resisted by HMRC.
5. The appeal is almost four years out of time.
- 25 6. The grounds of appeal advanced are that the amendment and assessments  
substantially overstate the profits of the Appellants’ business.
7. Mr Sarwar, on behalf of the Appellants, explained that the partnership business  
ceased trading on 31 October 2005 (a fact accepted by HMRC) and that the  
accountant who acted for the partnership had stopped acting and had ignored or  
30 overlooked letters sent by HMRC. Letters sent to the appellants by HMRC had also  
been ignored or overlooked by them because (Mr Sarwar said) they did not  
understand the import of correspondence from HMRC. These letters included a  
notice requiring documents and information (sent by Officer Barnes on 20 February  
2007) and penalty notices relating to penalties charged for failure to comply with the  
35 notice (the penalties had not been paid). In 2011 HMRC had attempted enforcement  
of the tax liabilities against the second Appellant, who was the nominated partner of  
the partnership.
8. This had prompted action on the part of the Appellants, who had, on 22 July  
40 2011, through Rehncy Shaheen, Chartered Accountants, sent revised computations  
for three out of the four years concerned, that is, for the years 2002/03, 2003/04 and  
2004/05. As a result, HMRC, through Mr Ratcliff, accept that the amendments and

assessments do in fact overcharge the Appellants, though it must be noted that Rehncy Shaheen do not seek to defend the figures in the original tax returns submitted by the Appellants – they say in their letter dated 22 July 2011: ‘We had mentioned to you earlier that these [*sic*] would be a need to revise our client’s submission as there may have been some errors’. The adjustments proposed by Rehncy Shaheen were £7,408, 5 £2,154 and £471 for the years 2002/03, 2003/04 and 2004/05 respectively.

9. In considering whether to allow an extension of time to appeal, the Tribunal has to undertake a balancing exercise, balancing on the one hand our assessment of the Appellants’ culpability in delaying lodging their notice of appeal for almost 4 years, 10 and the prejudice to HMRC in terms of the public interest in good administration and legal certainty, which is undermined if permission is granted to bring an appeal so late, and, on the other hand, the loss and injury which would be suffered by the Appellants if an extension of time is refused. We accept that real and significant loss and injury has been established by the Appellants.

15 10. It is established by authority that even where the merits of a proposed appeal are high, in the sense that the Tribunal can safely conclude that the appeal would be likely (or even certain) to succeed, this cannot be a factor to ‘trump’ all other facts which we must consider (*R (oao Cook) v General Commissioners of Income Tax* [2009] EWHC 590 (Admin), where Dyson LJ (as he then was) mentioned the prejudice to HMRC 20 which arises if appeals are sought to be brought out of time in ‘not being able to close its books’ and the public interest in ‘promoting the policy that challenges to assessments should be brought within the short period specified by statute’).

11. This is a case where no reasonable excuse has been offered for the Appellants effectively refusing to cooperate with HMRC, and where the Appellants accept that 25 their original returns understated their tax liabilities. We have concluded that the Appellants’ culpability in delaying lodging their notice of appeal for almost 4 years (for which they are 100% responsible) and the prejudice to HMRC in terms of the public interest in good administration and legal certainty do in this case outweigh the admitted loss and injury which would be suffered by the Appellants if an extension of 30 time is refused.

12. Accordingly we refuse the Appellant’s application and the appeal will be struck out pursuant to rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

13. The Tribunal enquired at the hearing (without response from Mr Ratcliff) 35 whether the matter could be dealt with extra-statutorily. The Tribunal’s Decision herein does not preclude HMRC as an administrative matter reviewing the amendment and the assessments with a view to reducing them to a figure which corresponds with what HMRC now understands to be a more just estimate of the Appellants’ profits. The Tribunal (while not directing such a review) observes that it 40 would be good administrative practice to undertake it if (which the Tribunal considers would probably be the case) such course is reasonably practicable from an administrative point of view.

14. 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 15 June 2012**