



TC02116

Appeal number: TC/2010/06931

Procedure – application to set aside original decision –application dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PRITI LEE

Appellant

- and -

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

TRIBUNAL: JUDGE GREG SINFIELD

Application by the Appellant for decision to be set aside dealt with on paper

DECISION

1. This is an application by Mrs Priti Lee (“Mrs Lee”) to set aside the decision of the First-tier Tribunal (“FTT”) released on 20 April 2012 in an appeal by Mrs Lee
5 against Information Notices requiring her to provide information and documents relating to the tax years 2005/6, 2006/7 and 2007/8 to HM Revenue and Customs (“HMRC”). The FTT decided that Mrs Lee had no right of appeal against the Information Notices for 2005/6 and 2007/8 and, accordingly, the appeals in relation to those Notices must be struck out. The FTT dismissed the appeal against the
10 Information Notice in respect of 2006/7 and confirmed that Notice.

2. The decision followed a hearing of the appeal on 3 April 2012 in Birmingham at which Mrs Lee was not present. As stated in the FTT decision, the appeal had been listed twice before, in December 2011 and January 2012, and postponed because Mrs Lee was recovering from a knee injury. The hearing was re-listed at a time when it
15 was hoped that Mrs Lee would be well enough to attend but, when the time came, Mrs Lee stated that her knee was still causing her pain and she could not attend in person. The Tribunal had made advance arrangements for Mrs Lee to attend by telephone. On the day of the hearing, the clerk to the Tribunal called Mrs Lee who said that she was not feeling well enough to participate in the proceedings by telephone. Mrs Lee
20 asked the FTT to deal with her appeal on the papers. The FTT decided that it was in the interests of justice to proceed with the hearing of the case in Mrs Lee’s absence under rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the FTT Rules”). Mrs Lee now applies to have that decision set aside.

3. Rule 38 of the FTT Rules provides as follows:

25 “Setting aside a decision which disposes of proceedings

38(1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it if

(a) the Tribunal considers that it is in the interests of justice to do so; and

30 (b) one or more of the conditions in paragraph (2) is satisfied.

(2) The conditions are

(a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party’s representative;

35 (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time;

(c) there has been some other procedural irregularity in the proceedings;
or

(d) a party, or a party's representative, was not present at a hearing related to the proceedings.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.”

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4. Before the FTT will set aside a decision and re-consider a case, therefore, it must first consider that it would be in the interests of justice for it to do so. Secondly, it must be satisfied that one of the conditions in Rule 38(2) is satisfied. Thirdly, the party must have made its application so that it was received within the 28 day time limit set out in rule 38(3). Mrs Lee's application was sent to the FTT on 5 May 2012 ie within the 28 day time limit. Mrs Lee was not at the hearing of the appeal so the condition in rule 38(2)(d) is met. The only issue for consideration is whether it is in the interest of justice to set aside the decision.

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5. In her application, Mrs Lee sets out, in 18 numbered paragraphs, various points in support of her application. In summary, Mrs Lee's points are as follows:

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(1)She had not received papers lodged by HMRC with the FTT. The papers seen by the FTT were all correspondence between HMRC and Mrs Lee which she would already have seen.

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(2)She agrees that she was asked to comment on the phone but went back to bed because of a painful knee. Mrs Lee says that she asked to make clarifications before the FTT made a decision. The FTT was not told that Mrs Lee wished to take any part in the proceedings but, as recorded in the decision, that she asked the Tribunal to deal with her appeal on the papers.

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(3)She was not sent notices to submit her tax returns in the normal way. The tax returns were not the subject of the appeal.

(4) She was not working in 2002 and asked for a tax rebate but has never received it. The rebate was not the subject of the appeal

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(5)She provides details about losses incurred in relation to a flat in Salford and related litigation which eventually led to Mrs Lee being awarded some damages. The Salford property and the compensation were not the subject of the appeal.

(6)She provides details about another appeal relating to VAT and the Salford property. The earlier appeal was not relevant to the present appeal.

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(7)She received the Information Notices around 4 August 2011 and had a telephone conversation with HMRC and the officer confirmed that no tax was due on interest on compensation. In fact this point was referred to in the decision at [15] but was not the subject of the appeal and so the FTT did not make any finding in relation to it.

(8)She asks the FTT to order HMRC to pay all outstanding amounts to her and she should not be charged interest. The appeal was not concerned with any amounts due to or from Mrs Lee.

5 6. None of the points set out in Mrs Lee’s application for the decision to be set aside deals with or has any bearing on the decision. The appeal related to Information Notices. In the case of two of the Notices, the FTT found that Mrs Lee had no right of appeal because the Information Notices required her to produce statutory records. In relation to the other Information Notice, the FTT found that the information was reasonably required (as it was in the case of the other two Notices, if that ever became
10 relevant).

7. It is clearly not in the interests of justice to set aside a decision that was correctly decided simply because one of the parties is not present. Mrs Lee’s request for the decision to be set aside does not provide any reason why the FTT might have reached a different decision if Mrs Lee had attended the hearing. In conclusion, the
15 application for the decision to be set aside is refused.

Rights of appeal

8. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with the Tribunal’s 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
20 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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**GREG SINFIELD
TRIBUNAL JUDGE**

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RELEASE DATE: 5 July 2012