



TC02502

Appeal number: TC/2012/06127 and 06128

CAPITAL GAINS TAX – whether the Appellants disposed of property in 2001 or 2007 – held: disposal by appellants in 2007 - whether Appellants entitled to roll-over relief under section 152 TCGA or hold-over relief under section 165 TCGA - held: neither relief available- appeals dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**BIPIN MANGALBHAI PATEL
RAJAN BIPIN PATEL**

Appellants

- and -

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

Respondents

**TRIBUNAL: JUDGE GUY BRANNAN
RICHARD THOMAS**

Sitting in public at Bedford Square, London on 11 January 2013

The Appellants did not appear and were not represented

Alan Hall, Presenting Officer, for the Respondents

DECISION

Introduction

- 5 1. These appeals concern the date of the disposal for the purposes of capital gains tax ("CGT") of a share in the freehold interest and goodwill in a property called Clackclose House ("the property") by the appellants (Mr and Mrs Patel) and whether they are entitled to roll-over or hold-over relief under, respectively, sections 152 and 165 Taxation of Chargeable Gains Act 1992 ("TCGA").
- 10 2. The appellants did not appear and were not represented at the hearing. By a letter dated 4 January 2013 sent by the appellant's accountants to the tribunal, we were informed that neither appellant nor any of their representatives would attend the hearing but that they wished the tribunal to consider matters in their absence. Accordingly, being satisfied that the appellants had been notified of the hearing, we
- 15 determined that it would be in the interests of justice to proceed with the hearing.

The facts

3. We find the following facts.

4. The property, a residential/nursing home, was acquired by the appellants, Mr Patel's brother, his wife and a company called Cashdraft Limited ("Cashdraft") in
- 20 January 1989. Cashdraft acquired a 60% interest and each of the other parties acquired a 10% interest. The price paid was £685,000. The price was apportioned as follows:

Freehold	£575,000
Goodwill	£ 90,000
25 Fixtures and fittings	<u>£ 20,000</u>
Total	<u>£685,000</u>

5. The property was run as a residential/ care home business carried on by a partnership called Clackclose House. The partners were the appellants, Mr Patel's
- 30 brother and his wife. The partnership commenced trading and 24 January 1989. Cashdraft was not a partner and we had no information about the arrangements between Cashdraft and the partnership.

6. On 31 March 2000 Mr Patel left the partnership. Mrs Patel left the partnership on 5 April 2000. The appellants' names did not appear on the partnership tax returns
- 35 for the year beginning 6 April 2000 or any later year. Moreover, the appellants did not declare partnership income from Clackclose House in their returns for 2000-2001 and subsequent years.

7. Mr A B Patel, the son of the appellants, joined the partnership on 6 April 2001.

8. Mr Patel's brother died on 23 July 2003.

9. From 24 July 2003 to 5 October 2007, the partners in the partnership consisted of the widow of Mr Patel's brother and Mr A B Patel.

10. On 5 October 2007, the partnership ceased trading and the property was sold to an unconnected third party. The consideration for the sale was £835,000, which was apportioned as follows:

Freehold	£760,000
Goodwill	£ 50,000
Fixtures and fittings	<u>£ 25,000</u>
Total	£835,000

11. Twenty percent of the consideration in respect of the sale was paid directly to the appellants, who were still shown on the register of title as co-owners of the property. The appellants' accountants assert, as we understand it, that this was because the appellants had given their son a deposit of £50,000 in respect of the purchase of a house and had been paying his monthly mortgage instalments of £3000 per month since August 2006. Furthermore, according to the accountants, the appellants had, one month before the sale of the property, helped to finance the son's 50% share of the £752,944 purchase price of a shop in Much Hadham, Hertfordshire. No evidence was produced to substantiate these assertions.

12. In the tax year 2007 – 2008, Mr A B Patel declared a gain on the disposal of the property in his tax return. The appellants did not declare a gain in their tax returns for that tax year.

13. The appellants' accountants argued that the appellants had disposed of their beneficial interest in the property to Mr A B Patel on 6 April 2001. Therefore, they argued, any gain in respect of the disposal of the property on 5 October 2007 was chargeable upon him and not upon the appellants.

14. In the alternative, the accountants argued that, if the gain was assessable on the appellants, then they were entitled to claim roll-over relief under section 152 TCGA or alternatively hold-over relief under section 165 TCGA.

15. The appellants claimed roll-over relief in August 2010 under section 152 TCGA on the basis that the disposal proceeds could be rolled-over against the purchase in 2009 of another property, 2 Jotmans Lane, and that the appellants were trading but did not take any profits from the partnership in the final years. In the alternative, the appellants made a claim for hold-over relief under section 165 TCGA on 21 February 2011 on the basis that the appellants' beneficial interest in the property was transferred to Mr A B Patel on 6 April 2001.

16. The appellants produced no evidence to substantiate their claim that they had transferred their interest in the property to their son Mr A B Patel on 6 April 2001, save for the assertions made in their accountants' letters to HMRC.

17. Assessments to capital gains tax were raised against Mr Patel on 1 March 2012 in the amount of £6,137 and against Mrs Patel on the same date in the amount of £6,320.20. The appellants have appealed against these assessments.

Relevant statutory provisions

5 18. Section 152 TCGA provides:

10 (1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (“the old assets”) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (“the new assets”) which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are within the classes of assets listed in section 155, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—

15 (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

20 (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

30 19. Section 165 TCGA provides:

(1) If—

35 (a) an individual (“the transferor”) makes a disposal otherwise than under a bargain at arm's length of an asset within subsection (2) below, and

(b) a claim for relief under this section is made by the transferor and the person who acquires the asset (“the transferee”) or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (3) and sections 166, 167, 169, 169B and 169C, subsection (4) below shall apply in relation to the disposal.

40 (2) An asset is within this subsection if—

(a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—

(i) the transferor,

.... (4) Where a claim for relief is made under this section in respect of a disposal—

5 (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and

(b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,

10 shall each be reduced by an amount equal to the held-over gain on the disposal.

20.Section 43(1) Taxes Management Act 1970 provides (in relation to the years of assessment in question):

15 (1) Subject to any provision of the Taxes Acts prescribing a longer or shorter period, no claim for relief in respect of income tax or capital gains tax may be made more than 5 years after the 31st January next following the year of assessment the year of assessment to which it relates.

Discussion

20 21. As noted above, the appellants produced no evidence to substantiate the claim that they had transferred the beneficial interest in the property to their son on 6 April 2001 or at any later time. The fact that Mr A B Patel became a partner on 6 April 2001 does not, of itself, mean that he acquired an interest in the property previously held by the appellants. No documentation relating to the transfer and no evidence in
25 relation to the terms on which Mr A B Patel became a partner was produced by the appellants.

22. Accordingly, we consider that the appellants have failed to discharge the onus of proof which lies on them to demonstrate that the assessments are incorrect.

30 23. We consider, therefore, that it was the appellants who disposed of their interests in the property on 5 October 2007, not Mr A B Patel.

24. Furthermore, the appellants ceased to be partners in the partnership by 5 April 2000. Their names did not appear on the partnership tax returns for the year beginning 6 April 2000 or any later year and they did not declare partnership income from the partnership in their returns for 2000-2001 and subsequent years. This clearly
35 indicates that they were not partners in the partnership after 5 April 2000.

25. In submissions to the tribunal the appellants' accountants argued that the appellants did not leave the partnership until 5 October 2007 i.e. the date when the property was sold. We do not accept the submission. No evidence was produced to substantiate this claim and for the reasons given above we consider it more probable
40 than not that the appellants left the partnership by 5 April 2000.

26. The appellants' accountants also asserted that if the appellants left the partnership in 2000, they became partners after the death of Mr Patel's brother – their "interest was being represented by their son", Mr A B Patel. The accountants asserted that Mr A B Patel (and the appellants) believed that the appellants were holding the property on an "implied trust" for the benefit of the son.

27. The difficulty with this submission, insofar as we understand it, is that there was simply no evidence to support it: no trust documents, no witness evidence and no contemporaneous correspondence were produced.

28. As a result, it was not possible for the appellants to claim roll-over relief under section 152 TCGA because they were not partners in the partnership after 5 April 2000 and, therefore, the property was not used for the purposes of the trade carried on by the appellants on 6 April 2001 when they claim to have transferred their interest to their son or on 5 October 2007 when the property was sold to a third party. In any event, as we have already held, there was no evidence that the appellants transferred their interest to their son on that date.

29. In relation to the claim for holdover relief under section 165 TCGA, this claim must fail because we have held that there was no transfer, legal or beneficial, by the appellants to Mr A B Patel on 6 April 2001. In any event, no claim was made within the period prescribed by section 43 Taxes Management Act 1970. The time period is extended in the case of an assessment made under section 36 Taxes Management Act, but the assessments under appeal were not made under this provision.

Decision

30. For the reasons given above, we dismiss these appeals.

31. 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.

**GUY BRANNAN
TRIBUNAL JUDGE**

RELEASE DATE: 30 January 2013