



**TC02805**

**Appeal number: TC/2012/08656**

*INCOME TAX application to make a late appeal against assessment – Tribunal found that appellant had arguable case that assessment was too high – appeal made late due to misleading advice from HMRC and accountant – in interest of fairness and justice application to make late appeal is allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR H L AMAH**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE SANDY RADFORD  
                  HELEN MYERSCOUGH ACA**

**Sitting in public at Colchester    on 15 April 2013**

**The Appellant in person**

**Miss Karen Weare, officer of HMRC, for the Respondents**

## DECISION

1. This is application for permission to make a late appeal under Section 49 Taxes  
5 Management Act 1970

### Background and facts

2. The appellant was subject to an enquiry for 2009-2010 which was opened on 2  
June 2011. The enquiry was into one point – a loss claim.

3. The appellant incurred a trading loss of £51,985 to cessation of his work as a  
10 dispensing optician for Dolland and Aitchison on 3 April 2009. £31,111 was carried  
back and set against his profit for 2008. Of the balance of the £20,874 loss, £15,838  
was claimed against the profit for 2010. It is this claim that was disallowed on the  
basis that it was a terminal loss which could not be carried forward to a different  
trade.

4. William Anang of W T Anang and Co acted for the appellant in the enquiry. On  
15 22 August 2011 the agent wrote agreeing that the loss could not be used as claimed  
and an amended self-assessment issued on 16 November 2011 showed that the  
appellant was due to pay £2,682.44.

5. The appellant confirmed that he had always been a self-employed dispensing  
20 optician and had always been a sole trader.

6. He had been misinformed by his accountants who told him that the losses could  
not be carried forward because working as a locum dispensing optician was different  
to working as a self-employed franchisee dispensing optician for Dolland Aitchison.

7. The appellant stated that he made a loss in each month that he worked for  
25 Dolland Aitchison (“DA”) as he had to pay DA each month that he worked for them  
but his accountant omitted these amounts from the accounts until the last period.

8. The appellant stated that he did not understand the tax system and he had been  
told that the losses could not be carried forward because his locum job was different  
from what he did at DA.

9. He contacted Sean Mica of HMRC in November 2011 who informed the  
30 appellant that he could not appeal and that HMRC intended to sue for bankruptcy if  
the appellant did not pay the tax owed.

10. However on 18 April 2012 the application by the appellant for the Statutory  
35 Demand to be set aside was adjourned by the District Judge who ordered that HMRC  
should respond to the appellant’s submission that as he had remained in the same  
trade he was entitled to have the losses set aside against the tax claimed by HMRC.

11. The appellant stated that after this ruling by the judge he realised that he could  
appeal and so he did so.

12. He had not done so previously because the accountant and Mr Micah had told him that there was no point in doing so.

### **Appellant's submissions**

5 13. The appellant submitted that if the accountant had claimed the losses that he made each month whilst working for DA the problem would not have arisen.

14. The appellant submitted that he had in any event been in the same trade allalong that of a dispensing optician.

15. The appellant submitted that he would have appealed in time if he had not been informed by Mr Micah of HMRC that he could not do so.

10 16. The appellant submitted that there was prejudice to him if he was not allowed to pursue the appeal.

### **HMRC's submissions**

15 17. Miss Weare submitted that HMRC believed that it had interpreted the legislation correctly and that the appellant had pursued two different trades, one of a franchisee dispensing optician and one of a locum dispensing optician.

18. Miss Weare submitted that therefore HMRC thought that there was no merit in the appeal.

19. Miss Weare submitted that it was clear that if the Tribunal did give permission for the late appeal the matter would ultimately have to be decided by the Tribunal.

20 20. Miss Weare accepted that if the Tribunal gave permission for a late appeal it would be open to the appellant to have a review of the conclusion which could be appealed to the Tribunal if not in the appellant's favour or alternatively the substantive appeal could continue to Tribunal without a review.

### **Findings**

25 21. The Tribunal found that it was arguable that the losses should have been allowed.

22. The Tribunal found that on the evidence provided the appellant had continued in his trade as a self-employed dispensing optician throughout.

30 23. The Tribunal found that the appellant had wrongly been discouraged from appealing until the District Judge appeared to think that HMRC had a case to answer.

24. As a result of this the Tribunal found that the appellant had a reasonable excuse for making the late appeal.

25. The Tribunal found that there was merit in the appellant's appeal and in the interest of fairness and justice the appellant ought to be allowed to pursue an appeal.

**Decision**

26. The appellant’s application to make a late appeal against the tax assessment of £2682.44 is hereby allowed.

5 27. 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)”  
10 which accompanies and forms part of this decision notice.

15 **SANDY RADFORD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 26 July 2013**