



TC03055

Appeal number: TC/2012/08858

CAPITAL GAINS TAX – Claim for relief for overpaid tax – Schedule 1AB Taxes Management Act 1970 – return showing disposal of shares giving rise to a chargeable gain – capital gains tax paid – taxpayer later claiming that the transaction was fraudulent and the capital gains tax should be repaid to her – whether the shares had been beneficially owned by the taxpayer – found on the balance of probabilities that they had – held no overpayment of capital gains tax – Revenue’s alternative argument based on taxpayer’s failure to amend the return in time (Case C, paragraph 2(4), Schedule 1AB TMA) rejected on the basis that if there had been an overpayment it was for HMRC to prove that the taxpayer knew or ought reasonably to have known of that fact before the time for amendment of the return expired and they had not proved that fact – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SONIA NEERU SEHGAL

Appellant

and

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

Respondents

**TRIBUNAL: JUDGE JOHN WALTERS QC
DAVID EARLE**

Sitting in public at Bedford Square, London on 2 July 2013

There was no appearance by or on behalf of the Appellant

Paul O’Reilly, Presenting Officer, HM Revenue & Customs, for the Respondents

DECISION

Introductory

5 1. The appellant, Ms Sehgal, was not present or represented when the appeal was called on for hearing. We considered whether we should proceed with the hearing having regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) and in particular rule 33 of the Rules which gives us power to proceed if we are satisfied that Ms Sehgal had been notified of the hearing or that
10 reasonable steps had been taken to notify her of the hearing and we consider that it is in the interests of justice to proceed with the hearing.

2. We were told that Ms Sehgal had been notified of the hearing and we decided in the first instance to proceed with the hearing, reserving our final decision as to whether it was in the interests of justice to do so in the absence of Ms Sehgal until we
15 had had an opportunity to consider the case more fully (see: paragraph 31 below).

3. The appeal arises in unusual circumstances as follows.

4. A tax return for the year ended 5 April 2006 was sent in to the Respondents (“HMRC”) under Ms Sehgal’s then married name of Mrs S. N. Bassi. She accepts that the return shows her signature, although the return was not dated. The return was
20 received by HMRC on 4 May 2007 and HMRC (Nadia Shah, Revenue Officer at HMRC Centre 1, East Kilbride) acknowledged it by a letter dated 7 June 2007 in which she stated that HMRC had not sent Ms Sehgal a notice to make a tax return but (unless Ms Sehgal objected within 30 days) would treat the return ‘for all purposes as though it had been sent in response to a notice from us requiring you to make a Tax
25 Return’ to be delivered by the date on which Ms Sehgal’s return was actually received.

5. The return showed employment income and capital gains as follows: employment income of £12,978 before tax from an employment with British Airways plc and a capital gain derived from a disposal of 100 Ordinary A shares in Capstar Media
30 Group Ltd (“Capstar”) to A&R Technologies Group plc (“A&R”) on 11 January 2006 for disposal proceeds of £1,125,000. The chargeable gain computed in the return after taper relief and annual exempt amount claimed was £272,725.

6. We were told that a payment of £104,018.40 was sent with the return to cover the capital gains tax (“CGT”) due on the above disposal of Capstar shares. No copy of the cheque constituting the payment was retained by HMRC and we were told that
35 there was no covering letter and we were given no information as to what bank account the cheque was drawn on.

7. We were also told that there was evidence of a loan agreement taken out in the name of Ms Sehgal (Mrs Bassi) to fund the payment of CGT, and that there had been
40 a complaint made later to the Banking Ombudsman against the bank concerned in respect of its having allowed Ms Sehgal’s by then ex-husband (Mr Bassi) to take out a loan in Ms Sehgal’s (Mrs Bassi’s) name.

8. Ms Sehgal (Mrs Bassi) and Mr Bassi had been directors of Capstar and Ms Sehgal had been the Company Secretary of Capstar from 3 April 2002 to 11 January 2006.

9. Ms Sehgal had married Mr Daljit Singh Bassi on 3 October 1999. They had separated in December 2007.

5 10. On 20 November 2009, accountants acting for Ms Sehgal wrote to HMRC referring to Ms Sehgal's divorce proceedings and the matter generally as follows:

10 'During the court proceedings, it was strongly emphasised by [Ms Sehgal's] lawyers that although during the 8 years of marriage [Ms Sehgal] had signed many documents including blank cheques as her husband had demanded from time to time, it was discovered that her ex-husband had taken a substantial loan in [Ms Sehgal's] name and it was asserted that a [CGT] liability of some £104,000 was paid for the year ended 5 April 2006. This tax appears to have been paid from a development loan taken by her ex-husband in [Ms Sehgal's] name. This tax was paid on the sale of a company [Capstar]. [Ms Sehgal] had been apparently allocated 50% of the shares. Her share of the sale proceeds amounted to some £1,125,000. This amount did come into her bank account (controlled by her ex-husband) and then removed [*sic*] and it has not been possible to ascertain the ultimate destination of the funds. It came to light during the court proceedings that [Ms Sehgal's] ex-husband operated several companies, off-shore trusts and bank accounts and had earned substantial income during their marriage.

20 She does not recall that she had ever submitted or signed a tax return for the year 2005/2006. [Ms Sehgal] has been advised to reclaim the [CGT] paid for the year 2005/2006 as she has not submitted any tax return for this period nor did she have any knowledge of the company shares that would command proceeds of £2.25m of which her 50% share would amount to £1,125,000 particularly when the company was put into liquidation by the purchaser soon after its purchase. [Ms Sehgal] does not have any information, nor did she, to the best of her knowledge and recollection receive any enquiry as to how this return was dealt with by the Inland Revenue. Presumably the Inland Revenue must have been satisfied with the return.

We would be most grateful if you will kindly accept this letter as a formal claim for a full refund of [CGT] paid for 2005/2006. We would appreciate a copy of the 2005/2006 Tax Return containing the declared capital gain.

30 Her ex-husband [Mr Bassi] has also paid the same amount of [CGT] from the same loan taken in [Ms Sehgal's] name. However, we understand that he is not required to make any tax returns.'

35 11. No reply having been received to this letter, Ms Sehgal herself wrote to HMRC on 23 February 2010 asking for an update and response. This was acknowledged by HMRC in a letter dated 4 March 2010. HMRC stated that they would conduct a full review.

40 12. On 30 March 2010, HMRC wrote to the accountants who had sent the letter dated 20 November 2009 on behalf of Ms Sehgal informing them that HMRC's position was that a CGT liability had been correctly returned and discharged by Ms Sehgal in relation to her disposal of 50% of the shares in Capstar and that 'all appears to be in order'.

13. On 5 May 2010 Ms Sehgal wrote to HMRC saying that she had not submitted the tax return for 2005/06, that she had no knowledge of holding or disposing of any shares, that she had no knowledge of Capstar and was claiming a full refund of the

CGT paid, together with interest supplement. She asked that her letter be treated as an amendment of the return.

5 14. HMRC replied on 27 May 2010 noting that section 9ZA of the Taxes Management Act 1970 (“TMA”) provides that amendments cannot be made to a return more than 12 months after the filing date.

15. Ms Sehgal replied on 28 July 2010 making certain complaints and informing HMRC that she had been ‘forced to repay’ the bank loan taken out in her name to pay the CGT. She again requested repayment of the CGT with supplement.

10 16. On the prompting of HMRC, Ms Sehgal made a claim for overpayment relief under Schedule 1AB, TMA on 1 September 2010.

15 17. On 6 December 2010 Officer Mrs D Pomeroy of HMRC wrote to Ms Sehgal refusing the claim for overpayment relief. This was on the basis that documents filed at Companies House confirmed that 100 Ordinary A shares in Capstar had been held in the name of Sonia Neeru Bassi and had been disposed of on 11 January 2006 for the sum of £1,125,000 to A&R.

20 18. Ms Sehgal wrote to Mrs Pomeroy on 5 January 2011 disputing her decision and indicating that she wished to make an appeal to the Tribunal. She also sent a copy of (part of) a Note prepared on her behalf in the divorce proceedings in which the case is made out that Mr Bassi entered into transactions in Ms Sehgal’s name without her knowledge or involvement.

19. Mrs Pomeroy acknowledged Ms Sehgal’s letter by a letter dated 19 January 2011. In it she restated the facts of the matter as understood by her and her conclusion that Ms Sehgal’s claim for overpayment relief should be refused.

25 20. Ms Sehgal wrote again to Mrs Pomeroy on 10 February 2011. She contended that the tax return for 2005/2006, which she said she had not submitted, was fraudulent. She said that the share transaction of which she had not been even aware, had been bogus and no more than a scam. She suggested that HMRC had been ‘incompetent and/or negligent in dealing with this return (unlike your colleague in the Customs section who quickly spotted the 2005-2006 VAT return submitted by Daljit Bassi as fraudulent)’. She asked HMRC to reconsider the matter and accept a ‘proper genuinely corrected and amended return’. She submitted a ‘correct amended tax return for the year 2005/06’ under cover of a letter dated 4 March 2011.

35 21. By a letter dated 17 March 2011, Mrs Pomeroy informed Ms Sehgal that the amended return had been submitted too late to rank as an amendment and that the appropriate route for Ms Sehgal was her overpayment relief claim.

22. Ms Sehgal sent to Mrs Pomeroy under cover of a letter dated 7 May 2011 various copy documents in the context of allegations made against Mr Bassi. She sent further copy documents to Mrs Pomeroy under cover of a letter dated 12 May 2011 and subsequently.

23. Mrs Pomeroy wrote to Ms Sehgal on 8 August 2011 stating that the point that remained unresolved was whether or not Ms Sehgal was the beneficial owner of the shares in Capstar which had been sold. It was clear that Ms Sehgal had been the legal owner, but the question was whether Mr Bassi, rather than Ms Sehgal, had been the beneficial owner. Mrs Pomeroy asked Ms Sehgal to provide further evidence, particularly documentary evidence, that could be relevant to this issue.

24. Ms Sehgal replied on 7 September 2011 enclosing further information and documentation. Mrs Pomeroy responded on 21 February 2012 and Ms Sehgal replied to her on 28 February 2012 with further information and stating that the transaction (of the sale of Capstar) was 'no more than a fraud' and HMRC 'failed or ignored to deal with this and did not follow their right procedures'.

25. By a letter dated 4 April 2012, Mrs Pomeroy informed Ms Sehgal that she had decided to disallow Ms Sehgal's claim for overpayment relief. HMRC undertook a review of that decision.

26. The result of the review (by Officer C W Agg of HMRC) was communicated to Ms Sehgal in a letter dated 12 July 2012. Officer Agg stated his view that on the balance of probabilities Ms Sehgal was the beneficial as well as the legal owner of the shares in Capstar which were disposed of according to the original Tax Return for 2005/2006 which was submitted, and that that Tax Return was correct. He added 'at any rate, I consider that you have not demonstrated that the contrary is more likely to be the case, and so I conclude that overpayment relief is not due'. Alternatively, he considered that because Ms Sehgal had not amended the return during the period when she was legally entitled to amend it (the period up to and including 4 May 2008), then in any event HMRC was not liable to give effect to her claim by reason of Case C in paragraph 2 of Schedule 1AB TMA.

27. Ms Sehgal appeals to the Tribunal against the decision not to allow her claim to recover overpaid tax. The appeal was made slightly out of time but Mr O'Reilly, for HMRC, did not take any point on that and we formally extend time for appealing so that the appeal will be treated as if it had been made in time.

28. Schedule 1AB TMA is relevantly in the following terms:

'Schedule 1AB Recovery of Overpaid Tax etc.

Claim for relief for overpaid tax etc

1 (1) This paragraph applies where-

(a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or

(b) ...

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.

(3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.

(4) ...

(5) ...

(6) ...

(7) ...

5 2 (1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph ...

(2) ...

(3) ...

(4) Case C is where the claimant-

10 (a) could have sought relief by taking [other steps under an enactment relating to the taxation of capital gains] within a period which has now expired, and

(b) knew, or ought reasonably to have known, before the end of that period that such relief was available.'

15 29. The issues on the appeal are as follows. First, whether there has been an overpayment of CGT by Ms Sehgal. This depends on whether or not she did in fact make the disposal of the shares in Capstar referred to in the original Tax Return for 2005/2006. This in turn depends on whether she was beneficially entitled to the shares in Capstar so referred to. Secondly, whether this is a case within Case C in
20 paragraph 2 of Schedule 1AB, TMA, where Ms Sehgal could have sought relief by making an amendment to the original Tax Return for 2005/06 within the time allowed for such amendments and she knew or ought reasonably to have known before the end of that time that relief was available (on the basis that the original Tax Return for 2005/06 overstated her liability to CGT).

25 30. Mr O'Reilly makes the additional point that if Mr Bassi, rather than Ms Sehgal, was to be regarded as the beneficial owner of the Capstar shares referred to in Ms Sehgal's tax return, then the repayment claimed should not be made to Ms Sehgal, but should be retained by HMRC and appropriated to Mr Bassi's CGT liability.

30 31. Because of the extensive correspondence from Ms Sehgal, which we have considered and summarised above, we have concluded that it is in the interests of justice for us to proceed with the hearing and give a decision.

35 32. If the disposal of Capstar shares for a consideration of £1,250,000 was indeed a fraudulent transaction, then it seems to us that it is more probable than not that the sum of £104,018.40 paid as CGT on behalf of Ms Sehgal, in respect of the chargeable gain arising on the disposal, was also fraudulently obtained and Ms Sehgal has no
40 right to require its refund from HMRC. The real burden of Ms Sehgal's complaint seems to be that in the divorce proceedings she has had to give credit (apparently from the sale proceeds of a house) to pay off the loan which was incurred to fund the sum paid as CGT. Therefore, from her point of view, she says that she has had to bear the burden of the amount paid as tax without receiving any benefit from the sums obtained on the disposal. However, as the accountants' letter of 20 November 2009 makes clear, this matter – and indeed all the circumstances surrounding the sale of the shares in Capstar – were raised in the divorce (or ancillary relief) proceedings, which we were told were ultimately settled between the parties. In the absence of any

evidence pointing to the contrary, we find that Ms Sehgal's complaint referred to above – and all other such disclosed matters – were taken into account in the settlement of those proceedings and dealt with accordingly. Ms Sehgal's complaint, as referred to above, is therefore not relevant to our disposal of this appeal.

5 33. In this appeal, the primary question for us is whether Ms Sehgal has indeed made an overpayment of CGT.

34. First of all, did she make the disposal of Capstar shares? The evidence is clear that they were disposed of for the consideration declared, albeit that Ms Sehgal was deprived of the benefit of that consideration almost instantaneously. Was she the beneficial owner of the Capstar shares immediately before they were disposed of to A&R? She was the Company Secretary of Capstar, as appears from Companies House records, and we are not persuaded that it is more likely than not that Mr Bassi, rather than Ms Sehgal (Mrs Bassi), was the beneficial owner of shares registered in Ms Sehgal's (Mrs Bassi's) name. The evidence given in Ms Sehgal's correspondence with HMRC concerning the pattern of the conduct of financial affairs which was adopted by Ms Sehgal and Mr Bassi throughout their marriage suggests that in general (in accordance with relevant customary and cultural norms) Mr Bassi conducted financial affairs on behalf of his wife and that Ms Sehgal signed any necessary papers when asked to do so by Mr Bassi. We infer from this that Ms Sehgal broadly consented to this pattern of the conduct of financial affairs and acquiesced in Mr Bassi's actions on her behalf during her marriage up until at least 11 January 2006 (the date of the sale of the Capstar shares). Mr Bassi's beneficial ownership of the shares, rather than Ms Sehgal's, is a matter which Ms Sehgal must prove by evidence and we are not satisfied that she has been able to do so. We find facts accordingly and dismiss the appeal on the basis that there has been no overpayment of CGT.

35. We do not agree with HMRC's alternative argument, that the case comes within Case C in paragraph 2 of Schedule 1 AB, TMA. By HMRC's letter dated 7 June 2007 sent to Ms Sehgal (Mrs Bassi) in response to receipt of the original Tax Return for 2005/2006, Ms Sehgal was informed that unless HMRC received an objection from her within 30 days the return would be treated for all purposes as if it had been sent in response to a notice from HMRC requiring the submission of a tax return by the date on which it was actually received (4 May 2007). On that basis, any amendment should have been made on or before 4 May 2008 (see: section 9ZA TMA). The first communication indicating that Ms Sehgal wished to amend the return was the letter from the accountants dated 20 November 2009. This was some 18 months out of time for an amendment. There is evidence (the Note produced for the purposes of the divorce proceedings on 24 April 2009) that the point was well in mind by 24 April 2009. The question then arises, did Ms Sehgal know, or ought she reasonably have known, by 4 May 2008, that she had made an overpayment (if indeed she had made an overpayment)? Ms Sehgal and Mr Bassi separated in December 2007. We consider that if HMRC wish to rely on Case C, it is for them to prove on the balance of probabilities that Ms Sehgal knew or ought reasonably to have known by 4 May 2008 that she had made an overpayment. We find that HMRC have not

proved this fact. We therefore would not have dismissed the appeal on this ground if we had found that there had indeed been an overpayment of CGT.

5 36. 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: 19 November 2013