



TC03815

Appeal number: TC/2014/00126

Income Tax – Repayment claim for 2008/09 – Whether outwith time-limit – Yes – Schedule 1AB Taxes Management Act 1970 – Application for strike-out under Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – Application granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOHNPAUL BBOSA

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
DR HEIDI POON, CA, CTA, PhD**

**Sitting in public at Wellington House, 134-136 Wellington Street, Glasgow on
Friday 27 June 2014**

Appellant – appeared in person

Respondents – Mrs Shari McMullen, Officer of HMRC

DECISION

Introduction

1. This is an application by HMRC to strike-out the appellant's claim for a repayment of income tax for 2008/09 in respect of trading profits. The basis for the application is that the claim is time-barred in that it was not made until after 5 April 2013, after the expiry of four years from the end of the tax year concerned. The amount of the repayment sought is £4,644.18.

2. Schedule 1AB TMA 1970 provides for repayment claims made on or after 1 April 2010, and that even if the tax year concerned falls before that date. In particular para 3(1) states:-

“A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.”

Evidence and submissions

3. Mrs McMullen introduced the hearing, setting out the crucial aspects for determination. She referred the Tribunal firstly to HMRC's internal records at 4.43 of HMRC's productions. Item 10 was a record of a telephone call from Mr Bbosa on 17 July 2013 disputing the amount of tax due for 2008/09. This, she argued, fell after the four year period had expired and was the first intimation which HMRC had of such a repayment claim. She then noted production 3/1, a letter from the appellant dated 3 October 2013 referring to earlier letters sent in July and August 2013. Production 3/2 is a copy of the appellant's letter of 23 August 2013. Crucially this correspondence post-dated 5 April 2013 when any claim had become out of time.

4. Mrs McMullen then referred to productions 3/4-5, a letter from the appellant dated 12 November 2013. There, for the first time, he makes reference to an earlier alleged contact with HMRC in February 2013. The nature of the contact is not specified. Perhaps significantly, Mrs McMullen suggested, that letter followed HMRC's letter dated 1 November 2013 (appellant's file 3/8) which states specifically that 5 April 2013 was the terminal date for a claim to amend the self-assessment tax Return. There, the appellant also argued that the shorter four year time-limit introduced in 2010 did not apply to the circumstances of his claim.

5. Mrs McMullen stated that HMRC had not received a letter from the taxpayer in February 2013. She disputed that the principal of the letter, a copy of which is produced at 3/12, was ever received by HMRC before the crucial date of 5 April 2013. Why, she wondered, had it not been mentioned or founded upon in the taxpayer's earlier correspondence and telephone calls in July and August 2013. Why, too, was it not mentioned in the Grounds for Appeal in the appellant's Notice of Appeal (page 5 thereof). HMRC's internal log of telephone calls and correspondence produced at 4/40-44 was complete, she stated.

6. In short, Mrs McMullen argued, there was no evidence of a timeous repayment claim. A phone call had been made in July 2013 and there was subsequent correspondence from the appellant referring to that phone call, but all of that was too late. The claim, she submitted, was out of time. The strike-out of the claim was accordingly appropriate in terms of Rule 8(2) which provides that the Tribunal must strike-out proceedings if it does not have jurisdiction to consider them. (Further, the

Tribunal would observe, under Rule 8(3) it may strike out proceedings where it considers that there is no reasonable prospect of the appellant's case succeeding.). This Tribunal, she added, could not review the exercise of a discretion by HMRC.

5 7. The appellant, Mr Bbosa, then addressed us. He had produced earlier Written Submissions which he adopted. Essentially he argued

- (i) that the repayment claim was not time-barred given that he had written to HMRC in February 2013;
- (ii) that he had been misled about the time-limits by HMRC's officers; and
- 10 (iii) that in particular he reasonably believed that he had been allowed an extra four months to correct the Return for 2008/09 for repayment purposes.

8. Mr Bbosa explained that for about five months in 2008/09 he had traded in clothing in addition to his employment as a secondary school teacher, teaching business studies. He had instructed an accountant to submit a tax Return on his behalf. However, he claimed that he had discovered subsequently errors in the
15 Return. He had not reverted to his accountant or instructed another professional on his behalf for reasons of expense. We noted that he said that he could not afford an accountant's fee of £120 in relation to a claimed excess payment of tax of £4,644.18.

9. Mr Bbosa was insistent that he had duly posted the principal of the copy letter dated 25 February 2013 produced at 3/12. That was a timeous application for
20 repayment. He asserted too that he had telephoned HMRC shortly before, but had been disappointed with the lack of progress made. Then, he claimed, he had been advised by HMRC that information about his tax affairs would be sent to him about five weeks thereafter. Mr Bbosa indicated in his evidence that that had caused him anxiety as he was conscious that he had to submit his claim by 5 April 2013. He
25 explained that in 2009 he had been told (then correctly) by HMRC that there was a six year time limit. (The Tribunal noted his admitted state of awareness as at February 2013 of the new four year time-limit as being critical.)

10. Mr Bbosa criticised as inaccurate HMRC's log at 4/40-44. While HMRC's letter to him dated 11 July 2013 referred to a phone call made on 2nd July 2013, that
30 was recorded as having been made on 3rd July at item 11 on 4/14.

11. Mr Bbosa noted also in 4/40-43 earlier communings with HMRC in 2009, but there appears to be an interval of almost two years between September 2011 and July 2013 when there was no contact between them. Mr Bbosa explained that he himself had not the skill to prepare a tax Return.

35 12. Mr Bbosa referred us to the decision in *HMD Response International* [2011] UKFTT 472 (TC) which, he claimed, supported his argument that he had an "honest and genuine belief" that he had made a timeous application. He noted also the decision in the appeal of *Mr C Rumham & Ms C Naramore* [2011] UKFTT 55 (TC) in which a *reasonable excuse* arose from the loss of a Return in the post. He made
40 reference also to the appeal of *Colin Humphreys* [2011] UKFTT 98 (TC) and the statutory definition of the term "*reasonable excuse*". In the circumstances, he claimed, he had been misled by HMRC and that provided a *reasonable excuse* in respect of any delay on his part.

Conclusion

13. The issue for the Tribunal's determination is whether a repayment claim for 2008/09 was made timeously by the appellant ie before 5 April 2013. In particular did the appellant send timeously the letter bearing the date 25 February 2013 to
5 HMRC. Crucially the appellant admitted in oral evidence that he had been aware by early 2013 that the claim would become time-barred by 5 April 2013.

14. On our assessment of the evidence a timeous repayment claim was not made and the principal of the copy letter bearing the date 25 February 2013 was not sent by the appellant. We did not consider him to be a credible witness on whom we could
10 rely. He failed to satisfy us in several important respects, and that we consider undermined materially his evidence.

15. Firstly, he failed to explain why he had not made reference to the letter of February 2013 in his letters to HMRC in August and October 2013 or in the Grounds for Appeal. Further, given that he had received no acknowledgement of that letter
15 from HMRC, and that he was aware of the imminent deadline for making the repayment claim, he could not explain satisfactorily why he had delayed in making further contact with HMRC until the telephone call recorded in July 2013. We were somewhat puzzled by his claim that he could not revise the figures of profit himself: this, given his professional background teaching business studies in a secondary
20 school, seemed improbable. Given that the recovery claim was for an amount in excess of £4,600, we were surprised that the appellant was not prepared to incur some further relatively modest professional fees to pursue the matter.

16. Other than the oral evidence of the appellant there is nothing to support his assertion that he was misled by HMRC. He is an obviously intelligent man, not
25 unversed in commercial matters. As such we consider that he would be well able to understand the sense of a *net profit* and compute this for business taxation purposes.

17. In relation to the crucial matters we make the following *Findings-in-Fact*:-

- (1) During the tax year 2008/09 the appellant traded in buying and selling clothing for a period of five months and that in addition to his employment as a
30 secondary school teacher of business studies.
- (2) The appellant instructed an accountant to prepare the appropriate tax Return on his behalf. An assessment to tax of £4,644.18 in respect of the trading resulted. Although the appellant was subsequently dissatisfied with the terms of the Return submitted, he did not revert to his accountant or consult another
35 professional adviser about it.
- (3) HMRC's "SA notes", respondents' productions 4/40-43, are a true and accurate record of contact between them and the appellant in relation to this assessment. In 2009 there is recorded telephone contact between HMRC and the appellant. He was then advised (correctly) by HMRC that the time limit for repayment
40 claims was six years from the end of the tax year.
- (4) By February 2013 the appellant was aware that this time-limit had been abbreviated to four years and that this was applicable to any repayment claim to be made by him for 2008/09.

- 5 (5) The first intimation to HMRC of any claim by the appellant for repayment of tax for 2008/09 was a telephone call made on 17 July 2013 (4/43, note 10). Subsequently the appellant sent letters to HMRC seeking a repayment dated 23 August and 3 October 2013 (3/2 and 1). There is no reference in these letters or in the Grounds of Appeal to any repayment claim or letter pre-dating 5 April 2013. No such repayment claim was made.
- (6) The appellant was not misled by HMRC into believing that the time-limit for any repayment claim by him for 2008/09 had been extended beyond 5 April 2013.
- 10 18. Further, we **find-in-law** that the repayment claim for the tax year 2008/09 by the appellant is time-barred. The four year time-limit introduced by FA 2009 affecting claims made on or after 1 April 2010 applies.
19. In these circumstances the respondents' Application for strike-out of the Appeal falls to be granted in terms of Rule 8.
- 15 20. 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 20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

25

KENNETH MURE, QC
TRIBUNAL JUDGE

RELEASE DATE: 18 July 2014

30