



**TC03937**

**Appeal number: TC/2013/01536**

*INCOME TAX – Application to bring late appeal -Bankruptcy proceedings – time given by Bankruptcy Court for taxpayer to sort out tax affairs – Tax returns outstanding – apparent lack of cooperation - no explanation for this or for late appeal – No reasonable excuse shown- After considering all the circumstances Application refused.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ADEWALE OKUBUTO**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT**

**MR ANTHONY HUGHES**

**Sitting in public at 45 Bedford Square, London WC1B 3DN, on 26 March 2014**

**The Appellant in person**

**John Corbett of HM Revenue and Customs, for the Respondents**

## DECISION

1. The Appellant's application to appeal out of time was dismissed after hearing the Appellant in person and Mr Corbett of HMRC. Accordingly, a direction to this effect was issued.

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2. The Reasons given in the direction for the dismissal were as follows.

[1.] The Appellant gave no explanation for the delay in appealing notwithstanding that the Appellant had been given a short period in which to do so by the Bankruptcy Court. The appeal was not sought to be made till some considerable time after the expiry of that period when one would have thought it would have been very high on the Appellant's list of priorities. No reason or proper explanation was given for the delay.

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[2.] Accordingly, there was no reason shown why permission to bring the appeal considerably out of time should be given.

3. The Taxpayer has now sought a full decision in this matter. This is the full decision in this matter. It does not change the essential point that no reason or explanation for seeking to bring an appeal out of time by some margin (both as to the assessments for the years in question and the time given by the Bankruptcy Court) was given. No explanation was given for the Appellant's apparent lack of cooperation nor for his failure to file the relevant tax returns or account for the in excess of £236,000 still unexplained.

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4. The assessments were dated 5 January 2011. Information requests were made.

5. HMRC carried out a number of inquiries into the Appellant's affairs including for 2006-07.

The Appellant was subsequently made subject to bankruptcy proceedings. Time had been given in the bankruptcy proceedings for the Appellant to sort out his tax affairs.

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6. HMRC had earlier informed the Appellant in a letter dated 7 June, 2011 that he could ask for an independent review or notify his appeals to the Tribunal Service. There was no response to this and the Appellant was informed on 21 July, 2011 that the appeals were now considered settled on the basis set out in HMRC's letter of 17 November, 2011 and subsequent closure notice and assessments dated 4 and 5 January 2011. There was no appeal actually made in time in respect of the assessments or closure notice. The period in which to do so had expired when HMRC wrote.

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7. The Appellant did not contact HMRC again until 9 August, 2012 (a week before the end of the Bankruptcy adjournment). The Appellant then informed HMRC that a bankruptcy hearing had been adjourned on 5 July, 2012 to 16 August, 2012 to give him time to sort out his tax affairs.

The Appellant was informed by HMRC the only way forward for him was to make a late appeal to the Tribunal Service. The Appellant submitted his appeal to the Tribunal on 12 December, 2012.

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This is almost some four months later and considerably longer from the grant of the adjournment and the assessments for the years in question.

8. The Appellant has given no reasonable excuse or explanation for the delay in matters from 7 June, 2011 to 12 December, 2012. He gave no explanation for his apparent lack of cooperation and failure to make returns.

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9. HMRC were informed that the Bankruptcy Court had requested that the Appellant submit his outstanding tax returns. The Appellants' tax returns for the years ended 5 April, 2010 and 5 April, 2011 have not yet been received. The Appellant was also requested as part of the inquiry into the Appellant's tax affairs for 2006-2007 to help reconcile bank deposits.

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10. The Appellant supplied some information but more than £236,000 was still unexplained. HMRC advised him on 7 December, 2012 that he would need to account for these unexplained deposits but to date he has failed to respond.

11. HMRC contend that the Appellant did not cooperate in the inquiries into his tax affairs and that this continues to be the case.

12. In those circumstances HMRC contended that permission to appeal out of time should be refused.

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13. In essence that Appellant contended he should be allowed to appeal given all the circumstances.

14. There was nothing before us to contradict HMRC's contentions as to lack of cooperation and failure to supply information or file returns. Accordingly, we accept these contentions and find these matters as matters of fact and to the extent possible as matters of primary fact.

15. The Tribunal considers that the Appellant had been given the opportunity to deal with his tax affairs by the Bankruptcy Court which had adjourned on 5 July, 2012. In the circumstances submitting a late appeal on 12 December, 2012 outside period the Bankruptcy Court had given them considerably after the appropriate period in which to appeal with no reasonable excuse put forward for the delay does not give any reasons for allowing a late appeal to be made whilst his tax returns are outstanding and information requests have not been complied with. The Appellant has been given full and fair opportunity to make the relevant appeals and has failed to do so.

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16. We find as a fact that HMRC has acted properly and fairly towards the Appellant and has given him ample opportunity to deal with his affairs properly. It is the Appellant's choice as to how he has responded to this.

17. Whilst we have had the opportunity of hearing and seeing the Appellant in person we did not hear any reasonable excuse for a late appeal or explanation for the failure to supply information or file returns. Given that he was facing bankruptcy and the level of liability involved the Tribunal was surprised that this had not concentrated his mind and that he had not pursued this matter expeditiously.

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18. We have carefully considered the fairness (including the proportionality) of the outcome of refusing a late appeal and consider that in the circumstances it is fair and reasonable to refuse not to accept the appeal out of time given the considerable opportunity that the Bankruptcy Court had given him which he had failed to take up and the lack of explanation for the delay and the outstanding tax returns and lack of the provision of information on the outstanding amount in excess of £236,000. In the absence of anything going to show a reasonable excuse we consider we

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have no option but to dismiss the application for a late appeal. We have carefully considered all the information before us in detail to see if there is anything that justifies the Tribunal allowing a late appeal and have found nothing in the information before us to do so.

5 19. We decide this having carefully considered the outcome of such a decision and all the  
circumstances and information available to us. Whilst we are sympathetic to the Appellant's plight  
there is nothing before us which would permit us properly to allow a late appeal. There was  
nothing before us which showed any prospect yet alone a reasonable prospect of success or an  
arguable case. In these circumstances the Tribunal concluded the only proper course was to refuse  
10 the application to appeal out of time. There has to be certainty at some point and the Tribunal has  
to be fair to the Appellant, HMRC and the taxpaying public. This we have sought to achieve.

15 20. This full decision therefore confirms the direction that the Appellant's application to appeal  
out of time should be refused. The Tribunal considers any other decision would prejudice HMRC  
and be unfair given that the Appellant had been given a considerable opportunity to sort out his tax  
affairs going back to 2007 and had failed to do so notwithstanding the adjournment the  
Bankruptcy court had given him.

20 21. Accordingly, as no grounds even remotely suggesting that the appeal should be entertained  
out of time having been shown the application to appeal out of time is dismissed.

25 22. 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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**ADRIAN SHIPWRIGHT  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 August 2014**

