



TC04098

Appeal number: TC/2013/04986

CAPITAL GAINS TAX – contract settlement – appellants seeking to challenge the contract settlement – jurisdiction of the tribunal – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**DOROTHY M MORRIS
JENNIE GREGSON**

Appellants

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN

Sitting in public in Manchester on 28 August 2014 with further submissions completed by 5 September 2014

Mrs Dorothy Morris appeared in person also representing Mrs Gregson

Mr Colin Ryder of HM Revenue & Customs appeared for the Respondents

Introduction

1. In this appeal Mrs Morris and Mrs Gregson seek to challenge a liability to capital gains tax, and in particular the valuation of the asset disposed of which purports to give rise to that liability.

2. HMRC contend that the tribunal has no jurisdiction to determine the issues being raised by Mrs Morris and Mrs Gregson. As a result a hearing was listed for the tribunal to consider whether or not it has jurisdiction. If not, the tribunal must strike out the appeal pursuant to Tribunal Rule 8(2)(a) which states:

“The Tribunal must strike out the whole or a part of the proceedings if the Tribunal –

a) does not have jurisdiction in relation to the proceedings or that part of them.”

3. I heard submissions from both parties in relation to the factual background and the Respondents provided a bundle of relevant documents. I also heard submissions from Mr Ryder in relation to the jurisdiction issue. Understandably Mrs Morris was content to rely on my own consideration of the jurisdiction issue and did not make any separate submissions.

Factual Background

4. There was no dispute as to the following factual background.

5. Mr George Sutton of Ascrofts Farm, Tarleton, Lancashire (“the Farm”) died on 28 January 2005. By his will he appointed his sisters Jennie Gregson, who is the Second Appellant and Alicia Marsden as his executors and trustees. He left his estate on trust for his four sisters including the First Appellant Mrs Dorothy Morris. The Farm was valued as at the date of death in the Inheritance Tax account at £650,000. The estate was not taxable for Inheritance Tax purposes because it was below the nil rate band threshold taking into account agricultural property relief.

6. In or about March 2006 the Farm was sold by public auction for £800,000.

7. The estate was administered but in 2009 the estate’s solicitors became concerned that the disposal of the Farm had been treated incorrectly for capital gains tax purposes. In particular that a capital gain possibly arose from the fact that the disposal proceeds were £800,000 but the base cost was £650,000. The solicitors wrote to HMRC on 18 June 2009 drawing the issue to their attention.

8. On 25 July 2009 Mrs Gregson, on the advice of Dodd & Co chartered accountants, made an estate return to HMRC making a claim to capital losses of some £18,000. This was on the basis of a claim under section 191 Inheritance Tax Act 1984 that the sale proceeds be substituted for the probate value at the date of death.

9. HMRC did not accept the loss claim and there was correspondence between HMRC and Dodd & Co. The value of the Farm was referred to the District Valuer. On 11 September 2009 the District Valuer wrote to HMRC identifying a value of £740,000 as at the date of death. The letter stated “[the value] has been agreed with Mrs J Gregson and Mrs D Murray at a meeting dated 11 September 2009.”

10. Following District Valuer’s letter Dodd & Co wrote to HMRC on 21 September 2009 as follows:

“We understand that one of the two executors, Mrs Gregson and her sister Mrs Morris met with the District Valuer and agreed this valuation with her. However we are currently in the process of trying to obtain written agreement from the other executor as to whether they accept this valuation.”

11. On 1 October 2009 Dodd & Co wrote to HMRC stating that they had received confirmation in writing from the remaining executor (Mrs Marsden) accepting the valuation. They stated that the two executors and the four beneficiaries now accept the revised valuation.

12. There was then some correspondence in relation to penalties. On 21 May 2010 HMRC wrote to Dodd & Co to the effect that they would seek to negotiate a contract settlement of the tax and penalties due rather than make a formal determination of penalties. HMRC proposed a total sum for tax, interest and penalties of £26,650. The tax element of this included CGT in relation to the Farm of £10,796.

13. On 28 June 2010 Dodd & Co wrote with a slightly amended offer on behalf of the executors in the sum of £26,612. The offer was signed by Mrs Gregson.

14. By letter dated 6 July 2010 HMRC accepted the offer. The outstanding tax, penalties and interest were paid, although it is not clear when.

15. In or about September 2010 Mrs Morris on behalf of Mrs Gregson initiated a complaint against HMRC. The substance of the complaint was that there had been no proper valuation of the Farm. They also complained about the service provided by the estate solicitors.

16. During the course of HMRC’s handling of the complaint, a letter was written to Mrs Morris and Mrs Gregson dated 26 June 2013. In that letter the complaint was not upheld. Mrs Morris and Mrs Gregson were told that if they did not agree with that decision then they had 30 days to appeal to the Tribunal Service. A Fact Sheet was provided which set out how to appeal to the Tribunal.

Decision and Reasons

17. Mr Ryder for HMRC contends that this tribunal (“the FTT”) has no jurisdiction in relation to the issue between the parties, namely whether the valuation and the resulting tax liability are correct. He submitted that there was no assessment which would engage the jurisdiction of the FTT. Instead matters were concluded by way of a

contract settlement. He relied on the description of the FTT's statutory jurisdiction in *Revenue & Customs Commissioners v Hok Limited [2012] UKUT 363 (TCC)*.

18. Mr Ryder submitted that in the present case there had been a contractual settlement without the need for any assessment. There was no statutory mechanism to appeal a contractual settlement. He accepted that the executors would be entitled to challenge the enforceability of the contractual settlement in any enforcement proceedings brought by HMRC in the County Court or the High Court.

19. The power of HMRC to enter into contract settlements was confirmed by the Court of Appeal in *IRC v Nuttall [1990] STC 194*. At p203h Ralph Gibson LJ accepted the submission of counsel to the Crown that where a sum is agreed to be paid under a contract of compromise, the commissioners are bound by that contract and cannot in respect of the year or years covered by the contract pursue any claims to tax, interest or penalties. The sum payable under the contract can only be recovered by proceedings at law for debt.

20. It is implicit that a contract settlement takes effect outside the statutory regime of assessments and appeals to the FTT. In so far as HMRC wish to enforce a contract settlement they must do so by proceedings in debt. In so far as a taxpayer wishes to challenge the enforceability of such a contract he or she must do so in defending such proceedings.

21. In the present case, where the tax has been paid, it seems to me that the executors' only remedy, if any, would be to commence proceedings against HMRC for recovery of sums paid under a mistake of fact and/or law. The mistake alleged would be that they wrongly believed there was a contractual obligation to make the payment. I should emphasise that I am not saying anything about the merits of such proceedings nor am I encouraging Mrs Morris and Mrs Gregson to commence such proceedings. The only reason I identify it as a possible remedy is to highlight that the absence of a remedy via the FTT does not mean that they are without remedy.

22. Mr Ryder accepted that HMRC's correspondence had misled Mrs Morris and Mrs Gregson into believing that they may have a remedy in the FTT. For the reasons given above I am satisfied that their remedy, if any, does not lie in this tribunal. The FTT has no jurisdiction in relation to the existence of a contractual settlement in these circumstances.

23. Following the oral hearing, Mr Ryder very helpfully referred in correspondence to what HMRC describe as "overpayment relief". The HMRC Enquiry Manual at EM 6413 deals with "post settlement issues" and re-opening a settlement. It states as follows:

"Where a taxpayer has entered into a legal contract which is binding, we are not obliged to make any adjustments to the underlying figures.

It would however be incorrect to apply this in a way that places a cooperative taxpayer at a disadvantage over an un-cooperative one. For example, we may

5 *have to settle an enquiry into the return of an un-cooperated taxpayer using formal action at every stage. Because we have settled by assessment, they are entitled, within the relevant time limits, to all the relieving provisions in the Taxes Acts. This is in contrast to a cooperative taxpayer who has settled by contract.*

We must therefore make sure that a taxpayer who has settled by contract is not disadvantaged and has the benefit of any adjustment that they could have claimed if the liability had been dealt with by assessment. In these circumstances you must consider re-opening the settlement.

10 *The most common claims of this type are to loss relief (especially under ITA07/S72) and CTA10/S458 relief. You may also get claims to relief that were previously overlooked, or for FA09/Sch 52 overpayment relief adjustments.”*

15 24. Overpayment relief is relief available to a taxpayer where tax has been paid which was not due. It arises under section 33 and Schedule 1AB TMA 1970 and Mr Ryder suggested that it might be available in the present circumstances, together with a right of appeal if it is refused. However *IRC v Nuttall* is authority for the proposition that a taxpayer who has entered into a contract settlement has no scope to make a claim under section 33, at least as section 33 was then worded. At 205c Bingham LJ
20 stated:

25 *“ Such informal compromise deprives the taxpayer of the locus poenitentiae provided by section 54(2), and the right to re-open assessments under section 33, but it protects him against exercise of the Revenue's more draconian enforcement powers (e.g. under sections 61 and 65) and often, as here, against further liability for penalties and default interest.”*

30 25. Whilst I have not heard full argument on the point it does not seem to me that the FTT would have any jurisdiction in relation to a decision by HMRC pursuant to a claim under EM 6413 for the same reasons that it has no jurisdiction over the contract settlement. It is outside the statutory scheme of assessment and appeals. If I am wrong in that view then if HMRC were to refuse overpayment relief it would be necessary for the executors to make a further appeal to the FTT.

35 26. Mr Ryder indicated that HMRC was prepared to allow further time for Mrs Gregson to consider whether to make a claim for overpayment relief pursuant to EM 6413. It seems to me that in the circumstances that is a helpful suggestion and may avoid the necessity for separate proceedings by Mrs Gregson.

Conclusion

27. In all the circumstances I am satisfied that the FTT has no jurisdiction in relation to the contract settlement. I must therefore strike out the appeal.

40 28. It is most unfortunate that Mrs Morris and Mrs Gregson have been led down the path of a Tribunal appeal only to find that the tribunal does not have jurisdiction.

However there is no basis on which I can assume a jurisdiction which the FTT does not have. By way of summary and for the benefit of Mrs Morris and Mrs Gregson it seems to me that they now have the following options:

5 (1) To seek overpayment relief or the equivalent of overpayment relief pursuant to HMRC's practice described at EM 6413. I have already indicated my provisional view that the FTT would not have jurisdiction if HMRC decided to refuse relief.

10 (2) To commence proceedings in the County Court seeking recovery from HMRC of the sums paid on the basis that the contract settlement was not enforceable. Nothing I have said should be taken as encouraging such a course of action.

15 29. 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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**JONATHAN CANNAN
TRIBUNAL JUDGE**

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RELEASE DATE: 27 October 14