



TC04276

Appeal number: TC/2014/04024

*Income Tax – assessments – late notices of appeal – application refused –
Section 49 TMA 1970*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MOHAMMED ARSHID

Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE, QC
MRS CHARLOTTE BARBOUR, CA, CTA**

**Sitting in public at George House, 126 George Street, Edinburgh on Monday
12 January 2015**

Appellant:- Not present or represented

Respondents:- Matthew Mason, Officer of HMRC

DECISION

1. The Appellant was not present or represented. He was aware of the hearing,
5 however, and no explanation for his absence was provided. It seems that he may now
be insolvent and an insolvency practitioner may be managing his estate. In any event
such a related party did not appear either. In these circumstances it was considered to
be in the interests of justice to proceed notwithstanding the Appellant's absence.

2. Mr Mason invited us to treat the matter as an application to appeal late twelve
10 assessments to income tax for the Years 1992/93 to 2003/04 rather than deal with it as
a substantive appeal considering the calculation of liability. This seemed to be a
cautious but appropriate interpretation to adopt and we were content that the hearing
should proceed accordingly. We note HMRC's letter to the Appellant dated
15 16 September 2014 (Folio 1, p5-7). Mr Mason referred us to the Notice of Appeal at
F1, p15-16. There it is stated that the appeal is made late "on health grounds and on
economic grounds", and the appeal is being pursued on the basis that the figures on
which it is based are incorrect.

3. The assessments disputed are included in Folio 2. The date of issue in each case
is 5 March 2014, and it is indicated that the time-limit of 30 days applies in respect of
20 any appeal. That expired on 4 April 2014, but the Notice of Appeal was not
submitted until about 14 July 2014, and accordingly was about 102 days late.

4. This, Mr Mason explained, was not accepted by HMRC because a taxpayer
would have to have a *reasonable excuse* throughout the period of delay, and the
Appeal lodged as soon as possible once practicable. Section 49 TMA governs the
25 acceptance of a late Notice of Appeal. It was revised in form in 2009. So far as
HMRC are concerned, there must be a *reasonable excuse*, which, Mr Mason
submitted denoted some circumstance outside the taxpayer's control precluding
prompt submission. Mr Mason acknowledged that there had been reference to the
taxpayer's having attended Ninewells Hospital in May 2011 (F3, p11) but there was
30 no satisfactory medical certification of an ongoing condition which would have
precluded the submission of an earlier Notice of Appeal. In his letter to the Tribunal
dated 14 June 2014 Mr Mason (paras 3 and 4) noted that the Appellant was able to
run his various business interests and deal with professional agents at the relevant
time. This information, he explained, was derived from notes of meetings between
35 HMRC and the Appellant and from the Appellant's agents. Indeed, the disputed
assessments had been based on figures provided by Mr Eyles, a professional agent,
who had worked for the Appellant throughout. If HMRC did not agree to a late
Notice of Appeal, the Tribunal could grant permission. While HMRC had to have
regard to the existence of a *reasonable excuse*, he conceded that the Tribunal's
40 discretion was not so strictly fettered. (This is considered *infra*.)

5. Mr Mason questioned whether there could have been any health factor or
change which had been so debilitating that Notice of Appeal could not have been
lodged timeously. What prompted the Notice of Appeal, he suggested, was the court
proceedings raised against the Appellant by HMRC.

6. Mr Mason suggested that the Tribunal should consider in determining whether to allow the Notice of Appeal late, the reason for the delay, the length of the delay, whether HMRC would be prejudiced, and whether an injustice would result if it were refused. He founded on remarks of Sir Stephen Oliver QC in *Ogedegbe* (LON/2009/0200) at para 7. Sir Stephen stressed that the power should be exercised only “exceptionally” and, further, there must be at least an “arguable” case for making the appeal. He noted also observations by Judge Sinfield in the Upper Tribunal in *McCarthy & Stone (Developments) Ltd* (PTA/345/2013) at para 56 where the need for “finality” of any litigation was desirable in a just conclusion. Mr Mason stressed that in the present case no factor had been identified which would prevent a timeous appeal having been lodged. The Appellant was still able to function and seemed to appreciate Tribunal procedures. The prospects of success on the merits were highly questionable as originally HMRC had sought a higher assessment, but later had adopted lower figures produced after a forensic examination of the Appellant’s accounts conducted by his own agent, Mr Eyles. For all of these reasons Mr Mason moved us to dismiss the application.

Conclusion

7. We consider the submissions of Mr Mason well-founded. It may be, as he suggested, that this Tribunal’s discretion in terms of Section 49 is broader than that of HMRC. However, we are mindful of the guidance of Sir Stephen Oliver QC in *Ogedegbe*. Leave to appeal late should not be granted routinely: there has to be some sound reason or excuse. Also, it is relevant to consider the prospects of success on the merits of any appeal.

8. In the present case no substantial reason for the delay of over three months has been set out. There are references to “ill-health” and “economic grounds” but nothing more specific. There is no medical certification of any condition such as would disable the Appellant from managing his financial and business affairs over an extended period. Indeed, according to information provided by him and his representatives at meetings and in correspondence, he seems to have continued to manage his business affairs. (We refer again to Mr Mason’s letter to the Tribunal dated 14 September 2014.) Further, the calculation of the assessments is based on the Appellant’s agents’ own suggested computations. These are for lower sums than those originally sought by HMRC. The Appellant is, of course, absent today and that without satisfactory explanation.

9. We consider that leave to appeal late should be refused and accordingly this application is dismissed.

10. 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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**KENNETH MURE
TRIBUNAL JUDGE**

RELEASE DATE: 10 February 2015

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