



TC04907

Appeal number: TC/2014/06519

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UNITED WHOLESALE GROCERS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MEMBER: MRS EILEEN A SUMPTER, WS**

Sitting in public at Eagle Building, Glasgow on Monday 8 February 2016

Kamran Javed, for the Appellant

Mrs C Cowan, Officer of HMRC, for the Respondents

DECISION ON APPLICATIONS

Introduction

1. This is an appeal against—

5 (a) An assessment raised under paragraph 32 Schedule 18 Finance Act 1998 for the accounting period ended 31 December 2006 raised on 27 June 2014.

(b) An assessment raised under paragraph 32 Schedule 18 FA 1998 for the accounting period ended 31 December 2007 raised on 27 June 2014.

10 (c) An assessment raised under Section 455 Corporations Tax Act 2010 (“CTA”) for the accounting period ended 31 December 2006 raised on 27 June 2014.

(d) An assessment raised under Section 455 CTA 2010 for the accounting period ended 31 December 2006 raised on 27 June 2014.

15 2. The additional tax due thereunder is £27,709.12, £2,689.92, £35,250 and £1,093, a total of £66,742.04.

Background to the appeal

3. The appellant had requested a review of the decisions in this matter and the review officer having concluded that review notified the appellant by letter dated 14 November 2014 that the decisions notified in HMRC’s letters dated 16 June 2014 and 27 August 2014 would be upheld.

4. The appellant submitted a Notice of Appeal to HMCTS on 28 November 2014. The grounds of appeal were set out in paragraphs numbered 1(a) and (b), 2 and 3. Paragraph 4 stipulated “further evidences and documents will be submitted separately”.

25 5. HMRC responded very promptly on 16 December 2014 pointing out firstly that the amount of tax in dispute was described in the Notice of Appeal as being £61,093 yet the amount shown in the review letter dated 14 November 2014 totalled £63,742.04. Secondly it stated “so that any additional evidence may be considered as soon as possible can you please provide any further evidence or documents without any further delay”.

30 6. Mr Javed, the financial controller of the appellant, responded on 9 January 2015 enclosing a copy of the final notice to pay in the lesser sum and stating “regarding your request for further evidences, we have decided not to submit any further evidences”.

7. On 12 March 2015 HMRC lodged the Statement of Case.

8. On 3 June 2015 the Tribunal issued formal Directions in this appeal. Those Directions included the following:-

35 “(1) Not later than 5pm on 3 July 2015 both parties shall provide to the Tribunal and each other a List of Documents ... upon which the party providing the list intends to rely or produce in the proceedings ...

(2) ...

(3) Not later than 5pm on the twenty-eighth day before the hearing each party shall serve on the other party witness statements on whose evidence they intend to rely at the hearing.

(4) Not later than 5pm on the twenty-first day before the hearing the respondents shall provide to the appellant a paginated and bound bundle, and

5 (5) Not later than 5pm on the fourteenth day before the hearing, both parties shall provide to the Tribunal and each other party, an outline of the case that they will put to the Tribunal (a “skeleton argument”)...”.

9. On 1 July 2015 HMRC complied with Direction 1.

10. On 9 October 2015 HMRC wrote to the Tribunal enclosing the paginated and bound bundle and pointing out that that bundle did not contain any document specific to the appellant since the appellant had failed to provide to both the respondents and the Tribunal, a list of documents in compliance with Direction 1.

11. On 17 July 2015 HMCTS wrote to the appellant pointing out that there had been no compliance with Direction 1 and that if the list of documents was not furnished then the Judge at the hearing might not permit the appellant to use in evidence any documents other than those produced by HMRC. A response was requested within seven days. No response was received.

12. On 12 August 2015, HMRC wrote to HMCTS confirming that they had received nothing. On 14 September 2015 the appeal was listed for hearing on Monday 2 November 2015 and on 30 September 2015 HMRC requested a postponement. There was no response from the appellant and the postponement was granted.

13. On 6 October 2015 Mr Javed for the appellant wrote to HMRC, copied to HMCTS, intimating that the company representative details had been changed and that the new representative is “Mr K A Khokhar” and gave the address. The letter also stated that four individuals including Mr Ramzan (who was the chairman of the appellant) would be appearing as witnesses and a list of documents extending to six items was enclosed together with those documents. No application was made for a variation of any of the Directions or for the evidence to be admitted by the Tribunal. The documentation furnished was apparently not complete and attachments described as supporting documents were emailed to HMCTS on 7 October without comment.

14. On 1 December 2015 the appeal was listed for hearing on Monday 8 February 2016.

15. On 25 January 2016 HMRC wrote to HMCTS pointing out that in terms of the Directions, the witness statements were due to have been served no later than Monday 11 January 2016 and HMRC had served their witness statements on 6 January 2016. Nothing had been received from the appellants. HMRC pointed out that they “are being significantly disadvantaged in their preparation ... particularly so as three of the four witnesses are not already known to HMRC as party of the inquiry”. HMRC asked that unless the witness statements were submitted by return then the evidence should be disregarded. That letter was copied to the appellant and there was no response.

16. At the hearing Mr Javed and Mr Ramzan appeared with no additional evidence.

HMRC's application for strike out

17. Ms Cowan submitted an oral application that the appeal be struck out in terms of Rule 8(3)(b) of the the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on the basis that the appellant's failure to submit either witness statements or a skeleton argument timeously, or at all, had seriously prejudiced HMRC's position and that it was quite impossible for the Tribunal to deal with this appeal fairly and justly. We pointed out to the appellant that the Tribunal would consider Rule 8 in the context of Rule 2. The salient provisions are annexed at Appendix 1.

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17. Mr Javed initially argued that the appeal should not be struck out because they had been represented by Mr Khokhar, he had declined to present the case at the hearing and Mr Javed and Mr Ramzan were not conversant with Tribunal procedures so they had not implemented the Directions. They had assumed that Mr Ramzan would be able to give evidence in any event.

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18. We pointed out to Mr Javed that he was the financial controller of the company and had professional qualifications (M.com and FCCA). Quite apart from the fact that Mr Khokhar was one of the parties to whom there had apparently been a loan, he had also attended meetings with HMRC in the course of the inquiry, he was the appellant's auditor, he was a friend of Mr Ramzan and, as Ms Cowan pointed out, he had appeared to have had a significant interest in this appeal throughout.

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19. We did not accept Mr Javed's argument that effectively he and Mr Ramzan were "innocents abroad". Firstly and very pertinently as far as Mr Ramzan himself was concerned the Tribunal and, in particular, Judge Scott had previously struck out proceedings involving Mr Ramzan before the Tribunal because Mr Ramzan himself had failed to cooperate with the Tribunal. He had been explicitly put on notice that failure to provide information within time limits and to comply with Directions, could and would lead to strike out of proceedings. He most certainly should have been aware of the consequences of failure to comply with Directions.

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20. We explored the detail of the alleged prejudice to HMRC. The absence of a skeleton argument was a major problem since the argument advanced by Mr Javed in relation to the loan to Mr Riaz Ahmed in the letter of 9 July 2014 was completely different to the argument advanced at 1(a) in the grounds for appeal. Mr Javed and Mr Ramzan were unable to be clear about which argument it was their intention to pursue if they were permitted so to do.

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21. Further, HMRC pointed out, and we having read the papers had noted, that the various documentation provided in October 2015 by Mr Javed, being unsupported by any witness statements, could not be linked with any clear argument.

22. We afforded Mr Ramzan and Mr Javed two recesses in order to enable them to marshal any appropriate arguments in regard to the proposed strike out. We told them that notwithstanding Mr Javed's qualifications we would treat them as unrepresented

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appellants and endeavour to assist them. We pointed out the arguments that might be advanced such as, for example, the prejudice to the appellant if the case did not proceed.

Decision on strike out application

5 23. We decided that that part of the appeal which related to the loan to Mr Ahmed should be struck out since HMRC had been wholly unable to prepare for the hearing given the lack of clarity in that regard. We very narrowly decided that the other items being 1(b), the loan to Messrs Khokhar and United Worldwide Property Limited (“UWP”), the bad debts and the credit balance in other debtors could and should
10 proceed to a substantive hearing.

Mr Ramzan’s application to adjourn

15 24. In the course of the debate about strike out Mr Ramzan had requested an adjournment to enable him to obtain evidence etc. HMRC vigorously opposed that application. We had absolutely no hesitation in refusing that application since he was very clear that Mr Khokhar had represented the appellant until three weeks ago which was after the date by which witness statements should have been lodged. There had been an almost total lack of cooperation with the Tribunal and it seemed unlikely that that would improve.

HMRC’s application to exclude the evidence of Mr Ramzan

20 25. We granted that application on the basis that quite apart from the non-compliance with the Directions of the Tribunal, the appellant had been put on formal notice that failure to lodge any witness statement might lead to any such evidence being excluded.

Mr Javed’s deemed application to admit the evidence submitted in October 2015

25 26. This was vigorously opposed by HMRC and, in our view, on very good grounds. HMRC have had no notice whatsoever of any line of argument encompassing that documentation.

30 27. Mr Javed and Mr Ramzan conceded that they were prepared to proceed on the basis of the exclusion of the loan to Mr Ahmed and the exclusion of the paperwork forwarded in October 2015.

The substantive hearing

35 28. We invited Mr Javed to address the Tribunal in regard to the outstanding matters. We started with the loans to UWP and Mr Khokhar. It immediately became apparent that in fact the Notice of Appeal was incorrect in that the actual amounts being £50,000 and £40,000 respectively had been transposed. We then encountered a far more major problem insofar as we checked very carefully with Mr Javed whether or not the appellant’s arguments in regard to these loans were as set out at paragraphs 40-44 of HMRC’s skeleton argument. He confirmed that that was the

case. Unfortunately when we turned to HMRC's arguments in regard thereto, set out at paragraphs 60-65 of their skeleton argument, Mr Javed tried to argue that the sums involved had related to a share purchase, not a loan. That is completely inconsistent with his own argument.

5 29. It was apparent from the bundle, and we took him to at least two records of meeting therein, that Mr Javed had originally argued that the sums involved had related to shares but that the argument had subsequently changed and it had been argued that it was a loan. At that juncture Mr Ramzan indicated that he wished to withdraw the appeal.

10 30. We insisted that he consult with Mr Javed and gave him a further recess in order to discuss matters. He returned and submitted a formal letter of withdrawal. HMRC's concern was that the withdrawal of the appeal was simply a device to effectively obtain an adjournment. Whilst we understand that stance given the total lack of cooperation with the Tribunal by the appellant in the period since the Notice
15 of Appeal was lodged, nevertheless an appellant is entitled to withdraw an appeal.

31. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties
20 and may publish them on its website and either party will have 56 days in which to appeal. 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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**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 19 FEBRUARY 2016

2.—Overriding objective and parties’ obligations to co-operate with the Tribunal

5 (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

10 (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

15 (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

20 (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

25 (a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

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(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

35 **Rule 8**

(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

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(2) 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; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

5 (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;

10 (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or

(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

15 (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

20 (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant.

(7) This rule applies to a respondent as it applies to an appellant except that—

25 (a) a reference to the striking out of the proceedings must be read as a reference to the barring of the respondent from taking further part in the proceedings; and

(b) a reference to an application for the reinstatement of proceedings which have been struck out must be read as a reference to an application for the lifting of the bar on the respondent taking further part in the proceedings.

30 (8) If a respondent has been barred from taking further part in the proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submissions made by that respondent, and may summarily determine any or all issues against that respondent.