



TC04982

Appeal number: TC/2013/04982

INCOME TAX – HMRC amendments relating to disallowance of loan interest and legal costs upheld – whether legal costs eligible for post cessation trade relief –no - appeal in relation to 2005-6 dismissed - whether s54 TMA 1970 agreement for other earlier years as argued for by HMRC – no - lack of written notice of appeal to HMRC meant no s54 agreement but also meant no valid appeal before tribunal for earlier years- proceedings in relation to 2001-2 to 2004-5 proposed to be struck out for lack of jurisdiction.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MOHAMED SAHEID

Appellant

- and -

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

**TRIBUNAL: JUDGE SWAMI RAGHAVAN
 MOHAMMED FAROOQ**

Sitting in public at Bedford Square, London on 24 October 2014 and Fox Court, London on 10 October 2014 and 11 and 12 August 2015

Further submissions received in writing pursuant to the Tribunal's directions from HMRC on 25 August 2015 and from the appellant on 15 September 2015.

Mr Saheid appeared for himself assisted by Mrs Saheid

Siobhán Brown, HMRC officer HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The appeal relates to amended self assessments disallowing deductions in respect of legal and professional costs and loan interest for the years 2001-2 to 2005-6.

2. In relation to 2005-6, the appellant, Mr Saheid, also appeals against a closure notice and amendments to the partnership statement for the post office business which he ran with his wife, Mrs Saheid, in relation to the following issues:

(1) Loan interest in the amount of £10,523.

(2) Legal and professional fees relating to a dispute between the Mr Saheid and the Post Office in the amount of £37,448.

3. As regards loan interest, while HMRC accept Mr Saheid has provided evidence of the loan interest payments, they say he has not shown the loans upon which the interest was charged were used in the business.

4. In relation to the legal and professional fees HMRC say these were incurred after the trade ceased, and that if a claim were to be made it should have been made for 2006-7. In any case they say a claim would not meet the statutory conditions for relief for post-cessation expenditure.

5. For 2001-2 to 2004-5 HMRC say that while Mr Saheid had appealed these years to HMRC, a meeting had taken place agreeing the tax for those years and that the matter was settled by an agreement under s54 Taxes Management Act 1970 ("TMA 1970"). Mr Saheid disputes the fact that any such agreement was reached.

Evidence

6. We had before us an HMRC bundle containing the appellant's notice of appeal and HMRC's statement of case and the correspondence between the parties. We also had three lever arch files from the appellant, the first containing correspondence between the appellant and HMRC, the other two containing various bank and credit card statements. On the third day of the hearing we admitted before us, there being no objection from HMRC, a spreadsheet record Mr Saheid had prepared detailing payments made by the post office business spanning the period 11 October 2000 to 11 September 2007. There was also a further bundle containing various statements of account. HMRC's skeleton argument had annexed two letters in relation to the s54 TMA agreement issue which were also admitted before us.

7. We heard oral evidence from Mr and Mrs Saheid which HMRC had the opportunity to cross-examine. We found both Mr and Mrs Saheid to be credible witnesses.

Background

8. Mr and Mrs Saheid ran three businesses, Lyndhurst Road Sub-Post Office, Cross Dyke farm, and Chilingtons Residential care home. We deal with 2005-6 first which concerned the post office business, but before getting into the substance of the loan interest issue, and then the legal and professional expenses issue it is necessary to set out some of the correspondence that took place between Mr Saheid and Ms Islam, the HMRC inspector handling the matter, in order to deal with a preliminary argument as to whether HMRC were bound by what she had stated. Mr Saheid's refrain throughout the course of the hearing was that he had asked HMRC to look into certain matters but they had not. A recurring source of complaint for Mr Saheid is his view that he had suggested to Ms Islam that the interest payments should be pro-rated according to valuations of the farm, post office and residential home properties but that this was never followed up. We emphasise at the outset that the focus of our decision is not to deal with matters of HMRC's conduct but to concentrate on making findings as the purpose of the loans (on the interest issue) and the nature of the legal dispute and its relevance to the post office partnership. Our remit is to determine whether the amended assessment and amount are correct as a matter of law on the facts we have found. Our findings of fact are made on the basis of the documents and enclosures, and the oral evidence we heard.

20 *HMRC bound by Ms Islam's statements?*

9. On 25 February 2009 Ms Islam wrote to Mr Saheid in relation to the 2005-6 enquiry in the following terms:

“ I am writing to let you know that I have looked at all the information you have forwarded and hope to conclude the enquiry as follows:-

25 ...**Interest** this will be allowed in full”

10. On 8 June 2011 Ms Islam wrote to let Mr Saheid know that she would be amending the return for Lyndhurst Road Post Office for 2005-6. She stated that certain expenses would be disallowed because the expenditure was incurred after the business ceased. She stated:

30 “ I propose to disallow half of the loan interest claimed because the loans were raised to pay tax due from the previous enquiry. The amount to be disallowed is £5262...”

11. On 15 June 2011 this letter was followed up with a formal letter stating Ms Islam's conclusion to the check into the partnership return for the post office business. The conclusion disallowed the £5262. (It also disallowed £37,448 of legal expenses and an amount of £12,000 for legal expenses). The letter included a paragraph on appeal rights.

12. On 14 October 2011 Ms Islam also accepted an accrual in the accounts in respect of legal and professional expenditure “to save time so that the enquiry can now be closed” but indicated she was not allowing the figure of £12,000. Mr Saheid was given a further opportunity to present details of the credit card interest (Ms Islam

having reduced the amount claimed in respect of it by 50% because she thought some was for personal use.)

13. The matter was then handled through HMRC complaints officer Jenny Davies. From that correspondence it is clear that HMRC regarded the issue of interest as still open. The matter was referred to Mr Mee (HMRC Local Compliance SME) to deal with. His decision as set out in his letter of 12 February 2013 was that because Mr Saheid had not demonstrated how the interest was incurred in the course of the trade that he would not allow any of it.

14. The appellant requested a review and this was carried out by Mr Agg in a detailed letter dated 23 May 2013. Mr Agg's letter noted, having reviewed the statements in previous correspondence, that the statements indicated initially that the interest would be allowed in full and later that half of it would be allowed. He acknowledged that this put HMRC "in the uncomfortable position of failing to honour a clear undertaking it had previously given."

15. In his Notice of Appeal Mr Saheid argues that Ms Islam agreed that all the expenses claimed on the 2005-6 return were legal and proper, that they were allowed, and that his accountant, Mr Paul Bouch, confirmed this. He says it was wrong and unprofessional for Mr Mee (the officer making the decision) to overrule this six years later.

16. Given Ms Islam's letter concluding her enquiry disallowed £5262 the issue is whether it was open to HMRC increase the amount which was disallowed to the full amount of interest. (We note that at the points in time Ms Islam said all the interest could be deducted, and later half of it could be deducted, there was no notice of appeal which had been made which would have potentially allowed a s54 TMA agreement to come into being).

17. As to the issue of the extent to which HMRC would be constrained by the conclusions in the closure notice this was considered in *HMRC v Tower MCashback LLP* [2011] UKSC 19. The judgment of Lord Walker referred to Dr Avery Jones' observation in *D'Arcy* that :

"It seems to me inherent in the appeal system that the tribunal must form its own view on the law without being restricted to what the Revenue state in their conclusion or the taxpayer states in the notice of appeal. It follows that either party can (and in practice frequently does) change their legal arguments. Clearly any such change of argument must not ambush the taxpayer and it is the job of the Commissioners hearing the appeal to prevent this by case management."

18. In the closure notice, Ms Islam expressed the conclusion that 50% of the loan interest should be disallowed (with the obvious implication that 50% should be allowed). It is clear that, subject to concerns which might be addressed through case management, about the other side being ambushed, that additional legal arguments could be raised. There appears to be no reason in principle however as to why that proposition could not extend to a changed view on amount. In principle it is difficult

to see why if the amount is legally incorrect (because having reviewed the evidence again there is no basis for it) why that should make a difference. The Tribunal's jurisdiction still remains as set out in the legislation not only to reduce the assessment or amounts (s 50(6) TMA 1970) but also to increase the assessment (s 50(7) TMA 1970). There appears to be no basis on which the Tribunal is constrained from that function by the figure HMRC have put in their closure notice. There is no issue here of Mr Saheid being ambushed by HMRC's view as to disallowance of the whole amount of the assessment (this was notified to him in both Mr Mee's and Mr Agg's letter and in HMRC's statement of case.) The appropriateness of HMRC departing from a stated position might in principle be pursued through other forms of redress, such as complaints, the ombudsman, or administrative law remedies but it is not something which in our view binds the Tribunal in the appeal before it.

Loan interest

19. The loans referred to and in relation to which there was interest shown to have been paid during the period which was relevant for 2005-6 were as follows:

- (1) GE Life. Capital borrowed of £33,900. Interest of £2,589.96.
- (2) Windsor Life. Amount borrowed £33,900. Interest paid of £1414.52
- (3) AMC Option Annuity Mortgage – interest totalling £8,519.83

20. In relation to the farm and the residential care home no enquiry had been opened by HMRC. The interest claims for £8795 for the farm and £16,034 for the residential care home stood un-amended.

21. Mr Saheid had a mortgage on his home with Barclays Bank. He says Barclays transferred a loan which was wholly and exclusively as working capital for the farm to the mortgage to help him out with a lower rate of interest and a longer time to repay the loan.

22. The letter Mr Saheid showed us indicated that a loan had been taken out on 30 September 1991. On 12 February 1993 Barclays indicated it was prepared to convert the loan to Barclays Home mortgage of £147,500 with capital and interest repayable over a term of 15 years. Mr Agg's review letter of 23 May 2013 referred to statements having been received which covered the period under enquiry. Mr Saheid in his letter of 17 June 2013 stated the loan was used as working capital for the farm.

23. There was also a loan of £115,000 taken out with Allied Irish Bank. Mr Saheid insists the purpose of this loan was to buy the post office building. The statements were addressed to Mr Saheid at his address at the Lyndhurst Road Sub Post Office. We did not see any evidence of the amount of interest that was paid in 2005-6.

24. Mr Saheid prepared a spreadsheet of invoices paid which he used for VAT purposes. He updated it every three months. It showed the particulars of the invoice, its number, the cheque number and included columns for rates, electricity, postage, repairs, insurance, printing, bank interest, and sundries.

25. The sums in respect of the post office were paid from Mr Saheid's Lloyds personal bank account. There were no large bills. The loan amounts did not go into the Lloyds account, but into accounts Mr Saheid held with Robert Fleming or Cater Allen. No bills for the post office were paid from the Robert Fleming and Cater Allen accounts; they were used for larger payments made in respect of the care home business, the farm and for other matters.

26. Mr Saheid was invited to give evidence on the purpose of the loans. Referring to his letter of 20 February 2013 he explained:

(1) The Windsor Life loan was taken out to help run all three businesses i.e. the post office, the farm and the care home. He could not obtain an overdraft facility from a bank and the loan helped to pay the bills.

(2) The AMC loan was used to i) pay off credit card debts that over the years had reached £100,000 used for the businesses (as Mr Saheid had had to use credit cards to run the businesses as he had not been able to get an overdraft from the bank) and ii) for the day to day running of the three businesses.

Law

27. Rules restricting the deductions from profits of a trade are set out in Chapter 4 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

28. Section 34 provides:

“Expenses not wholly and exclusively for trade and unconnected losses

(1) In calculating the profits of a trade, no deduction is allowed for—

(a) expenses not incurred wholly and exclusively for the purposes of the trade, or

(b) losses not connected with or arising out of the trade.

(2). If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.”

Discussion

Loan interest issue

29. The central issue to consider is whether the loans / credit card debt upon which interest was claimed to be deductible were used in the post office business. Having carefully considered the evidence our conclusion is that they were not.

30. Mr Saheid explained the post office invoices came out of the Lloyds bank account. But, he was not able to show that the loan proceeds in relation to which he had claimed interest were paid into this account. In relation to the account from which

loan and credit card interest payments had been made he conversely was not able to demonstrate that this account had been used to make payments in respect of the post office business. Mr Saheid accepted that income from the other businesses was used to fund this account.

5 31. Mr Saheid's oral evidence and that emerging from his letters asserting that the loans were used in the business do not assist for the following reasons. A number of interest payments he referred to were outside the relevant period for 2005-6. In relation to the loans where interest was claimed during the relevant period the claim related to his businesses generally. As HMRC pointed out interest was allowed for the farm and residential home businesses in 2005-6. Where e.g. the Windsor Life loan or the AMC loan was said to relate to all three businesses we did not see any evidence of money coming in from the Windsor loan into an account from which sums in respect of the Post Office businesses were paid in the relevant period of account. We did not see it paying off credit card debt which related to the post office business.

15 32. The interest on the Barclays loan was not relevant to the post office business as it was being used as working capital for the farm business.

33. There was also some confusion apparent from Mr Saheid's recollection. Mr Saheid said he recalled calculating the interest payments by finding out the total and then dividing by three. He later accepted this was not correct having seen the amounts of interest that were claimed in respect of the various businesses. (He also maintained that there were further underlying records showing how the claim had been derived by his accountant. We did not consider it fair and just to, at that point in the hearing, further adjourn to see if these documents could be obtained. There had been ample opportunity to put this before the tribunal ahead of the hearing and given the whole point at issue was on this matter and it was clear HMRC were questioning the lack of evidence as to the claims having been used for business purposes we cannot see how Mr Saheid could reasonably have thought that, if there were underlying records explaining how the amounts of interest sought to be deducted had been derived, that these would not be relevant to his case, and that they ought therefore to have been brought to other party's attention and put before the Tribunal well before the hearing).

34. While Mrs Saheid argued that as the partnerships had been running at a loss it could be seen that in order for the businesses to have continued in the way they did that money would have had to have been borrowed and credit cards used to keep the businesses going, this was not borne out by Mr Saheid's evidence that income from the other businesses (the farm and the care home) were used to fund loan interest and credit interest payments. In view of this, and in the absence of sufficient evidence, we are unable to make a finding of fact that the particular payments of loan interest and credit card interest were for the purposes of the post office business.

35. In relation to the loan from Allied Irish Bank, even if were to be accepted that this was for the purposes of the sub-post office business there was no evidence before us of the amount of interest that had been charged or paid in respect of it which would enable findings of fact to be made on those matters.

Conclusion on deductibility of loan interest issue

36. HMRC's decision, that no amount of loan interest was to be allowed, is upheld.

2005-6 - deduction for legal and professional fees?

Facts

5 37. By way of background to this section of our decision we should point out that
the documentary evidence underlying the legal dispute which was provided to us in
the way of contracts, legal pleadings and correspondence was incomplete. Our
findings as to the nature of Mr Saheid's relationship with the Post Office, and the
legal dispute with them are based on his oral evidence and by inference from the
10 piecemeal correspondence we had before us in relation to the dispute and certain court
orders which were provided to us.

38. Mr Saheid entered into a contract with Post Office Limited some time around
July / August of 1989. As might be expected, his obligations under the contract
included matters such as selling postage stamps, processing and paying pensions, and
15 carrying out banking services. In return the post office paid him a certain amount of
pence for each stamp sold, each pension cashed etc. This was added together and at
the end of the month he was paid a sum the following month. Mr Saheid thought the
contract ran on indefinitely, unless for example something obviously wrong had taken
place e.g. theft of money. The post office trade could not have functioned without the
20 contract being place.

39. Mr Saheid explained that after getting involved in politics (he was a local
councillor and mayor) the post office became the subject of lots of complaints in
2004-5 the basis for which Mr Saheid thought was totally untrue (his suspicion was
that they were instigated by a competitor political party). Before the complaints the
25 business had been going well.

40. In relation to the period 2005-6 the post office did not have any employees
although others looked after it on those occasions when the Saheids were away. Mrs
Saheid was at the helm as Mr Saheid's time was taken up with his duties as the town's
mayor.

30 41. In around October 2005 Post Office Limited gave three months written notice to
Mr Saheid that it would be terminating the contract. It was open to the Post Office to
terminate the contract any time they wanted to. The letter mentioned that the contract
was being terminated because there had been too many complaints. Mr Saheid
objected in writing as he did not think there had been any complaints. His evidence
35 was that in making these objections, he was trying to protect his business and his
livelihood. On 4 January 2006, which was the day before the contract as due to be
terminated Mr Saheid recalled that he was called to a meeting with the Post Office at
their office in Lewes. He says that at that point the Post Office had realised that the
complaints were not true and that they had offered to let him keep running the office
40 but only if Mrs Saheid did not work there as most of the complaints had been about
her. He had explained that he was not able to work at the post office because of his

duties as the town mayor which kept him busy for whole days at a time. He did not want to rely on clerks – the only reliable person in his view was Mrs Saheid. The Post Office told him that in that case they would close the post office and came to the building the next day to do that.

5 42. Mr Saheid told us that word had got round the local community that the post office was going to close and the next day there were around 60-80 people outside protesting about the closure. The people from the Post Office could not even get to the door of the building. Mr Saheid said he did not give the people from the Post Office the keys either because he did not want the post office to be closed. He owned the
10 building and it took him over a year to be able to lease the building again. A post office business (run by different people) started again on 24 December 2006. The Post Office had wanted entry to remove cash and stationery and so on. They obtained an injunction and Mr Saheid allowed access after the injunction was granted.

15 43. The documents which were shown in relation to the legal proceedings (set out further below) indicated that Mr Saheid had filed a counter-claim against the Post Office but did not go into the detail of the claim. We invited Mr Saheid to tell us what he knew about it. He thought this related to the Post Office's cancellation of the contract which in his view was done wrongfully. He recalled that his lawyer had said he had had no chance of success so he decided to call the action off.

20 44. In his letter of 3 August 2011 to Ms Islam he explained that he was defending the Post Office's decision to close the Post Office and that the expenditure was for:

“... defending the Post Office's right to close the Post Office and to get some compensation for losing my livelihood.”

25 45. He had had a good rapport with the local community and he was concerned about the ability of elderly people being able to cash their pensions; they came to the Post Office from all over West Sussex. He had hoped that by taking legal action the post office could be reopened with himself and Mrs Saheid running it. He explained his rationale for resisting handing over entry was that until the Post Office staff obtained entry he thought he would have a chance of keeping his business open.

30 46. Mr Saheid's understanding of the background to an injunction sought by the Post Office was that this had arisen because they could not get in to the office premises because of the residents protesting outside. Mr Saheid described himself as a bystander to those protests. Mr and Mrs Saheid did not work in the post office after 5 January 2006.

35 47. The court orders we were referred to recorded the following: On 21 March 2006 Southampton County Court considered the Post Office's application for an injunction. It ordered :

40 “ The Defendant [Mr Saheid] shall forthwith upon service of this order upon him whether by himself or his servants, agents or any of them, provide unfettered access to the Claimant's auditors or other servants and/or agents to the Lyndhurst Road Post Office premises for the purposes of: i) performing an audit on the said office; and , ii) for the

purposes of removing all the Claimant's cash equipment and stock held upon the said premises. And shall not hinder or obstruct them in those functions."

5 48. Mr Saheid was ordered to pay £3,000 costs + VAT summarily. He told us he had handed the keys over to the post office following the injunction.

49. On 11 September 2006 in an order of Southampton County Court dated 15 September 2006, Mr Saheid's application to strike out the claim was dismissed. The order explained:

10 "On the basis the defence and counterclaim could never have had a reasonable chance of success on the basis that the injunction dated 21 March 2006 had been complied with to the satisfaction of the claimant and on the basis that the claimant abandoned any claim for interest against Mr Saheid (being the only remaining element of the claim) the claim and counterclaim were summarily dismissed."

15 50. Pursuant to judgment of 11 September 2006 Mr Saheid was ordered to pay the Post Office's costs of the action to be assessed if not agreed.

20 51. On 10 October 2006 letter correspondence from Mr Saheid's solicitors, Thomas Eggar, to Mr Saheid enclosed a letter from Bond Pearce (the Post Office's solicitors) which suggested that Mr Saheid was seeking to raise grounds that he should have raised as part of his counter-claim.

52. In Mr Saheid's return for 2005-6 he stated that the accounting period was for 1 October 2004 to 5 January 2006 and filled in the date of cessation as 5 January 2006.

53. The details of the legal fee related invoices we were referred to were as follows (the fees were exclusive of VAT):

25 (1) 31 January 2006 – counsel's fees – Farrar's buildings – Sally Cowen - £250.

(2) 16 February 2006 – Levinson Gray – dispute with Post Office Limited - £4,375.

30 (3) 17 February 2006 – Wikam (Mr Saheid thought this might be a barrister that had been instructed at Farrer's chambers.) – (this was referred to in correspondence and the fee was stated to be £2,000 however we were not taken to any invoice in relation to this fee.

(4) 21 March 2006 - injunction costs - £3,000.

35 (5) 31 March 2006 – Levison Gray invoice re. dispute with Post Office Limited - £2,021.25 costs and £111.78 disbursements.

(6) 24 April 2006 – Farrar's buildings – Sally Cowen £750 (rendered 22 Feb and 24 March 2006).

(7) 10 July 2006 – Farrar's buildings - Robert Lawrie £1250 (rendered from 21 March 2006).

(8) 12 July 2006 – Post office counsel’s brief fee - £750.

(9) 17 July 2006 – cheque stub showing payment to Levison Gray £2000.

(10) 30 April 2007 – Kain Knight (costs draftsman) invoice amount for preparing bill of costs for Post Office’s solicitors Bond Pearce - £1600.

5 (11) June 2007 - Bond Pearce – the Post Offices’ solicitors – £19,614 – to settle costs.

The above invoices total £35,610.25 – (they would be £37,610 if the amount for “Wikam” was included but in relation to there was no invoice)

Parties’ submissions

10 54. Mr Saheid argues that the legal expenses were incurred wholly and exclusively for the purposes of his business and that they are properly deductible. He made a valid claim for post-cessation relief and he argues that the conditions for the relief are met. As articulated by his accountant in correspondence this was because he was defending a claim that services provided had been defective. HMRC disagree that a valid in-time
15 claim for the year relating to the relevant expenses was received and that the relevant conditions for post-cessation relief expenditure were met.

Law

55. In relation to 2005-6 the relief for post-cessation relief expenditure was set out in s 109A ICTA 1988.

20 **“Relief for post-cessation expenditure**

(1)Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months
25 from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.

(2)This section applies to payments made wholly and exclusively-

30 a. in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or

35 b. in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective; or

c. in insuring against any liabilities arising out of any such claim or against the cost of incurring such expenses; or

40 d. for the purpose of collecting a debt taken into account in computing the profits of the former trade, profession or vocation.

[...]"

Discussion

56. There is, as indicated above, a preliminary point as raised in Mr Saheid's notice of appeal to the effect that HMRC should be bound by an Ms Islam agreeing that part of the legal fees were allowable in principle. The argument is not that Ms Islam agreed to this in her closure notice but that prior to that she had agreed that £12000 which had not been allowed in earlier years could be allowed in 2005-6. The issue of whether there such an agreement is not something which is within our jurisdiction. Further Mr Saheid's case before the tribunal would in any case face the difficulty of pointing to the legal basis under which expenses incurred in a prior year could be allowed in respect of a later year in which they had not been incurred.

Expenses within the correct year or post-cessation of trade?

57. Before dealing with the issue of whether the legal fees satisfied the conditions for post-cessation relief it is necessary to consider the date at which the trade ceased permanently. This is relevant because if it could be shown that certain legal expenses were paid before the post office trade had been permanently discontinued the relevant issue would be whether s34 ITTOIA (set out above) at [28] had been fulfilled. While this is an issue of fact, it does not necessarily follow in circumstances where the operation of a business has been suspended because for instance there is an ongoing dispute that the trade has permanently discontinued. Also the fact that a particular date was stated on Mr Saheid's return as the date of cessation is not necessarily conclusive although it may be a matter to take into account.

58. The following facts are relevant in our view and suggest to us that post trade discontinued permanently on 5 January 2006.

(1) No trade took place on the post office premises after 5 January 2006. Again this is not conclusive particularly in a situation where the non-trading arises from matters which are themselves the subject of the dispute in question.

(2) While we have taken account of Mr Saheid's views during this period and the hope he expressed that trading would continue we do not think those intentions are determinative and must we take into account was realistic given the particular circumstances. In summary it was not realistic to accept the Post Office would voluntarily allow Mr Saheid to trade again with Mrs Saheid working there. The contract with the post office had terminated. The indications are that it was terminated under the notice provisions of the contract (3 months) not because of a breach of contract. There was no realistic prospect in our view it would start up again. First, because Mr Saheid's position was that Mrs Saheid needed to be able to work there and it was clear the Post Office was not agreeable to that. Secondly, Mr Saheid had withheld access which would not we think have boded well for future relations.

(3) It was not realistic to expect that a legal action would result in Mr Saheid having a new contract with the Post Office. The legal advice received was that

Mr Saheid would be bound to fail and there was no point in pursuing the matter. Whatever hope that Mr Saheid held for re-commencing the post office business rested on a very weak foundation. It does not seem credible to us that the legal weakness in Mr Saheid's proposed stance only emerged because of what happened after 5 January 2006; it would we think have been apparent at the point the post office contract was terminated.

(4) By refusing to hand over the keys irrespective of whether Mr Saheid thought he would be successful in overturning the termination or in obtaining some redress in respect of it he cannot realistically have thought that he would be successful in getting the Post Office to agree to a new contract which would allow the partnership to continue to trade.

(5) The accounts period recorded on the return stated 5 January 2006 as the end date. This is consistent with trade ceasing on 5 January 2006 when the post office contract terminated.

59. In our view Mr Saheid's objective in pursuing the legal action reflected the fact that he wanted to get compensation for the way in which the termination had been handled by the post office. To the extent he hoped that a new contract would be given we think this is better characterised as a hope that a trade that had ceased would be re-established rather than a situation where trade was continuing pending the resolution of a legal dispute.

60. That being the case, as none of the legal expenses sought were incurred before the trade ceased we agree with HMRC that they are not allowable unless they fall with the provisions for post-cessation relief.

Post trade cessation relief

61. HMRC dispute that Mr Saheid has made a valid in-time claim for the relief for the correct year. Given the date of a number of invoices which post-dated 6 April 2006 they could not have been paid in 2005-6. The claim in respect of these ought to have been in a return for 2006-7 but no return was submitted for that year.

62. We note that the relief in s109A(1) is tied to "that year" which refers to the year in which the payment was made. There is no evidence that any payment was made in respect of legal expenses in 2005-6. In relation to invoices dated before the end of 2005-6 our difficulty is that we had insufficient evidence before us to make a finding that these invoices were paid in that period. There is also an issue in any case, as HMRC point out, that no claim for post-cessation relief was made in the partnership return for 2005-6. (Under Section 42(2) and (5) TMA 1970 where, (subject to exceptions which are not relevant to this case) a notice has been given to file a partnership return a claim shall not be made otherwise than by being included in the return if it could then or at any future time have been included in the return or in any amended return.) HMRC also say the claim for post-cessation relief breaches the seven year time limit stipulated for the relief and so is out of time but that is a misreading of the provision; the payments to which the relief relates must have been within seven years of the discontinuance of the trade. The relevant time limit (twelve

months from the 31st January next following the year of assessment in which the payment was made (i.e. 31st January 2008 for any payments made in 2005-6 and 31st January 2009 for any payments made in 2006-7) was nevertheless not met. There was no indication on the correspondence before us that a claim for post-cessation relief had been made by those deadlines. Mr Saheid's amended return for 2006-7 did not reference the claim and the earliest correspondence which could be taken to indicate a claim was a letter from Mr Saheid's accountant (Paul Bouch) dated 9 March 2009.

63. In any case, even if the above difficulties were to be surmounted we do not think it has been demonstrated that the conditions for the relief have been met. Mr Saheid's case is that the payments were made "wholly and exclusively...in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective". In correspondence from Mr Saheid's accountant it was argued by reference to the complaints that been made against Mrs Saheid that there was a claim that the services rendered had been defective.

64. In our judgment this argument mischaracterises the nature of the legal proceedings. There does not appear to us to have been a "claim" in the sense made by the provision (which we understand to be something more than an allegation but in the nature of a legal process) in respect of defective service. The Post Office was not suing for defective service which had been given. Its imperative, in our view was, given the complaints that had been made, to make it clear it no longer wished to continue with the contract with the Saheids going forward from a certain date. Therefore it would not be necessary to consider whether Mr Saheid's actions in relation to defending the injunction or his counter-claim were "in connection with" the claim because there was no relevant "claim" [that services was defective] falling within s109A ICTA 1988 in the first place.

Conclusion

65. HMRC's review decision was correct in finding that no relief was due in respect of the legal and professional expenses claimed for 2005-6 and is upheld.

2001-2 to 2004-5 – Section 54 agreement?

66. HMRC argue that Mr Saheid's appeals against these earlier years were settled by an agreement under s54 TMA 1970. A meeting took place between Ms Islam and Mr Saheid on 25 July 2006 in which it was said the assessments were agreed and Mr Saheid did not repudiate or resile from the agreement within the relevant statutory time limit. The assessments for those years have been finally determined by the operation of s54 and the tribunal has no jurisdiction therefore in relation to those years. Mr Saheid's case is that no such agreement was reached.

Law

67. s54 TMA 1970 provides:

“Settling of appeals by agreement

5 (1) Subject to the provisions of this section, where a person gives notice of appeal and, before the appeal is determined by the tribunal, the inspector or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision under appeal should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the tribunal had determined the appeal and had upheld the assessment or decision without variation, had varied it in that manner or had discharged or cancelled it, as the case may be.

10 (2) Subsection (1) of this section shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the inspector or other proper officer of the Crown that he desires to repudiate or resile from the agreement.

15 (3) Where an agreement is not in writing—
(a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the inspector or other proper officer of the Crown to the appellant or by the appellant to the inspector or other proper officer; and

20 (b) the references in the said preceding provisions to the time when the agreement was come to shall be construed as references to the time of the giving of the said notice of confirmation.

25 ...”

68. At the hearing clarification was sought by the panel on what HMRC’s case was as to the relevance of s54 TMA 1970 given there was no evidence before the tribunal that the appellant had given a notice of appeal which complied with the requirement that the notice be in writing (s31A TMA 1970). The parties were invited to make written representations on the point after the hearing.

69. As set out in HMRC’s response of 25 August 2015, s31A of TMA 1970 provides as follows:

“31A Appeals: Notice of appeal
35 (1) Notice of an appeal under section 31 of this Act [*which at 31(1)(b) covers an appeal against a conclusion stated or amendment made by a closure notice under s28B TMA 1970 which deals with completion of enquiries into partnership returns*] must be given -
a) in writing,
40 b) within 30 days after the specified date
c) to the relevant officer of the Board.”

Discussion - Was there a valid notice of appeal?

70. In their written representations HMRC accept that they did not obtain notification of an appeal in writing from the appellant for the period in question but they maintain that they did accept an oral appeal. (On 20 June 2006 HMRC say the appellant rang to say he could not afford to pay the tax liability and that he wanted to appeal against the amendments. HMRC say the case officer's manager agreed the verbal appeal could be accepted and that another meeting should be arranged with a view to reaching an agreement. HMRC argue that they exercised their rights under their power of care and management in accepting an oral appeal with a view to assist the appellant and to expedite the enquiry to bring it to a conclusion).

71. While Mr Saheid's correspondence does not make any legal submissions he indicated he wishes to contest the earlier years. His position throughout the proceedings had been that he did not want to be held to the figures set out in the purported s54 agreement. He mentions that he appealed "several times over the years (but does not specify the detail of those) but to no avail until Jenny Davies (the officer who handled his complaint against HMRC) "answered his plea" in 2012.

72. It is clear from the drafting of s54(1) that the giving of a notice of appeal by a person is pre-condition to the operation of section and that the reference to notice of appeal is one which is covered by s31A TMA 1970. We find as fact, given the correspondence we have received, that no appeal was filed in writing prior to the meeting at which it is maintained a s54 agreement was reached.

73. In our judgment, having considered HMRC's arguments, the fact there was no notice of appeal given in writing means there was no notice of appeal that was capable of having been given for the purposes of reaching the s54 agreement.

74. This follows first and foremost from an ordinary reading of the s31A TMA 1970 stipulating that the notice is in writing and the mandatory nature of the word "must" in s31A(1)(a).

75. Secondly, we note that as well as referring to the notice of appeal having to be in writing s 31A contains a number of provisions which also "must" be fulfilled (30 day time limit, notice given to particular officer) and at s 31A(5) TMA there is also a requirement that the appeal must specify grounds. The question of the consequences which follow if the requirements are not complied with receive specific consideration elsewhere in TMA e.g. Section 49 makes provision where notices of appeal have been given to HMRC outside of the relevant time limit and enables HMRC to agree that notice may be given after the relevant time limit. Section 31A(6) (which was still in force at the relevant time) allowed an appellant to put forward grounds not specified in the notice if satisfied the omission was not wilful or unreasonable. The fact that the Act makes particular provision which enables HMRC to relieve or mitigate the consequences of a requirement which would otherwise mean the notice was invalid suggests to us that in the absence of such specific relieving provisions the requirement *does* affect the validity of the notice. The requirement is not one, absent specific provisions, which can be waived.

76. Thirdly, we note that the drafting of s54 (subsections 3 and 4) TMA 1970 specifically mentions situations where notification may be given “orally or in writing” or where “an agreement is not in writing”. This indicates to us that if Parliament had wanted to allow for the possibility of a notice being given orally this could clearly
5 have been stated.

77. As to the argument that it is within HMRC’s care and management power to accept an oral appeal we understand this to refer to s1 TMA 1970 which states “The Commissioners for Her Majesty’s Revenue and Customs shall be responsible for the collection and management of - a) income tax...”. There is no indication however that
10 this provision would extend to turning what would otherwise be an invalid notice of appeal into a valid one. As indicated above, where Parliament has intended HMRC to have this ability it has clearly provided for this. While we can appreciate that HMRC’s stated motivations for accepting an oral appeal stemmed from a desire to reach a pragmatic resolution to the enquiry we were not persuaded, despite HMRC’s
15 arguments, that there was a legal foundation for treating a verbal appeal as if it were notice of appeal that had been filed in writing.

78. Given the above conclusion, although we heard the parties’ respective arguments at the hearing as to whether a s54 agreement had in fact been reached at the meeting on 25 July 2006 it is not necessary to make a determination on this issue.

79. HMRC indicated in their representations that if there was not an appeal then any
20 appeal now will be late. They suggest the consequences for the appellant of not accepting that there was a valid appeal will mean that the amendment and assessments will revert to those raised on 2 June 2006. They say that if the appellant then objects he will be required to submit a late appeal and provide a reasonable excuse for an
25 “appeal made over 9 years late to which [HMRC] will ultimately lodge objection to.”

80. It follows from our analysis above that the validity of the oral notice of appeal is not an issue which can be resolved by either HMRC’s or the appellant’s acceptance.

81. As an aside we set out for the benefit of the parties what steps would need to be taken in order for an appeal in relation to the earlier years to be brought before the
30 tribunal. Assuming the enquiries were opened and the closure notices and amended assessments were made, in order for an appeal to be brought before the tribunal in relation to those years (we were not referred to the documents which establish that enquiries were opened in relation to the years 2001-2 to 2004-5 or to the closure notice and amended assessments for the years 2001-2 to 2004-5 and do not make
35 findings of fact as to those matters), Mr Saheid will need to consider what if any of his correspondence with HMRC could be construed as a valid written notice of appeal against the amended assessments said to have been made on 2 June 2006, or if not make such a written notice specifying grounds of appeal as soon as possible to HMRC. HMRC in turn will need to consider whether, assuming any identified
40 correspondence is out of time, or in relation to any new notice of appeal to them, it agrees the notice may be given after the relevant time limit. If HMRC do not agree, Mr Saheid would then be able to make an application to the tribunal for permission to

allow a late appeal. If HMRC do agree, then Mr Saheid should be aware that he will still need to notify the appeal separately to the tribunal within any relevant time limits.

5 82. The effect of the conclusion is that there is at present no appealable decision before the tribunal in relation to the earlier years 2001-2 to 2004-5. There is no jurisdiction for the tribunal to make a determination in relation to these years of assessment. Where the Tribunal has no jurisdiction over the whole or part of the proceedings it must strike those out under Rule 8(2)(a) of the Tribunal Rules. Under Rule 8(4) the Tribunal may not strike out the proceedings without first giving the appellant an opportunity to make representations in relation to the proposed striking out. Accordingly, we direct that Mr Saheid may make any representations on the proposed striking out of the proceedings under TC/2013/04982 which relate to 2001-2 to 2004-5 in writing to the Tribunal no later than 21 days from the date this decision is released.

Conclusion

15 83. In summary our decision in relation to 2005-6 is as follows:

- (1) The deduction in respect of loan interest of £10,523 is disallowed.
- (2) The deduction in respect of legal and professional fees of £37,448 is disallowed.

84. The appeal against 2005-6 is therefore dismissed.

20 85. The tribunal does not consider it has jurisdiction in relation to the years 2001-2 to 2004-5 as there is currently no valid appeal before it. It is proposed that the proceedings dealing with those years are struck out for lack of jurisdiction for the reasons set out above. If Mr Saheid has any representations to on the proposal to strike out that part of the proceedings then these must be made in writing to the Tribunal no later than 21 days from the date this decision is released.

Right to apply for permission to appeal

30 86. 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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**SWAMI RAGHAVAN
TRIBUNAL JUDGE
RELEASE DATE:**

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