



TC05146

Appeal number: TC/2015/06178

Corporation Tax – Penalties – Late Returns – leave to appeal out of time refused – FA 1998, Schedule 18, paras 17 and 18 – Strike-out – Rule 8, Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GOVANHILL CONVENIENCE LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE KENNETH MURE, QC

Sitting in public at The Eagle Building, Glasgow on Wednesday 11 May 2016

Appellant – not represented

Respondents – Mr Matthew Mason, Presenting Officer, HMRC

DECISION

Preliminary Issue

1. This is an appeal against the imposition of penalties for the late submission of Returns for Corporation Tax for the accounting periods ending 31 August 2011 and 2012. The Notice of Appeal is directed against HMRC's letter of 9 May 2014 (tab 2, p9/10) which is in respect of penalties for the Years to 31 August 2011 and to 31 August 2012.
2. The preliminary issue arose in respect of the appellant taxpayer's application to seek leave to make a late appeal in respect of penalties issued in 2014 for the late filing of a Return for the accounting period ending 31 August 2013. No appeal has in fact been made in respect of that, and accordingly Mr Mason submitted that the Tribunal had no jurisdiction to entertain that part of the application. Accordingly he sought to have this part of the application struck out in terms of Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, which requires the Tribunal to strike out any proceedings over which it does not have jurisdiction.
3. I consider that Mr Mason's argument is sound. I do not have jurisdiction to consider matters which are not under appeal, and the application insofar as it bears to relate to a non-existing appeal falls to be struck out.

The evidence and circumstances

4. Although neither Mr Malik, the director of the appellant company, nor its accountant, Mr Siddiqui, appeared, they did lodge certain items of correspondence from them to HMRC. These explain the personal difficulties which, Mr Malik claimed, caused or contributed to the delay in lodging the Returns. He states that his elderly mother, who lived in Pakistan, became unwell in about May 2012. Her condition deteriorated thereafter and she died in March 2013. He was devoted to his mother, and he considered that she had been neglected by other members of her family. He travelled between Glasgow and Pakistan several times during her illness, spending extended periods of time with her there. The strain and emotional loss on him was overwhelming, he claimed.
5. On behalf of HMRC Mr Mason lodged a Schedule setting out the length of the delays in submitting the relevant Returns. Both are substantially late. Mr Mason referred also to meetings between HMRC, Mr Malik and Mr Siddiqui in May and October 2013 (tab 3, p1-16). These do not contain any explanation for the Returns being late, he claimed. Copies of all penalty notices had been sent to both Mr Malik, as director of the appellant company, and to Mr Siddiqui. They were well aware of the obligation to submit the outstanding Returns.
6. Further, Mr Mason did not accept that there was a *reasonable excuse* for the late submission of the appeals against the penalties imposed in respect of the late Returns. Mr Malik's mother had died in March 2013. All except the first two penalties were issued after her death. The first two, which relate to the Year to August 2011, could have been avoided had the Return been submitted by the due filing date, which was several months before her death. Mr Mason observed also that the complaints about

the penalties related to their calculation rather than their imposition. The first indication of any appeal had been in April 2014 for 2011 and January 2014 for 2012.

The Law

7. In addition to the relevant provisions of the Taxes Management Act 1970 and Finance Act 1998, in particular, Schedule 18, paras 17 and 18, Mr Mason referred me to the decisions in *Ogedegbe v HMRC* [2009] UKFTT 364 (TC); *O’Flaherty v HMRC* [2013] UKUT 161 (TCC); and *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) per Morgan J. Leave to appeal out of time, Mr Mason argued, should not be granted routinely. The prospect of success of any eventual appeal should be considered too. The length of the delay, any explanation and the consequences of an extension or a refusal all had to be noted. Here, the test of *reasonable excuse* was not satisfied, Mr Mason continued. The prospects for success, particularly given the pattern of substantial delays, was poor. In conclusion, Mr Mason urged me to refuse leave to appeal.

Conclusion

8. I consider that Mr Mason’s arguments are well-founded. I appreciate that my discretion in allowing a belated appeal is somewhat broader than HMRC’s. However, the length of the delays in appealing the penalties (apart from one) is substantial. There is a pattern of delay. The taxpayer was professionally advised and should have anticipated the consequences of delay. Moreover, the prospect for success in any appeal seems poor. The business was trading successfully. The correspondence and papers produced do not set out a convincing excuse for any delay or any ignorance on the part of Mr Malik of his tax obligations. I appreciate his commitment to his mother, but he does not appear to have been absent from the UK throughout her final illness. On any view he had the professional assistance of Mr Siddiqui available.

9. Having regard to the guidance in the case-law cited I do not consider that sufficient cause has been made out to justify the appeal against penalties to be allowed out of time. Accordingly the application is refused.

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.

**KENNETH MURE QC
TRIBUNAL JUDGE**

RELEASE DATE: 6 JUNE 2016