[2016] UKFTT 233 (TC)

TC05008

Appeal number: TC/2014/03771

VAT – Registration – whether HMRC were correct to register the appellant – effect of appellant being the victim of alleged coercion and fraud – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SUZANNE DEUTSCH **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
MEMBER: SHAMEEM AKHTAR

Sitting in public at Bristol on 24 March 2016

No attendance by or for the Appellant

Mr Haley, Officer of HMRC, for the Respondents

DECISION

Introduction

1. Although the Notice of Appeal dated 10 July 2014 described the tax involved in this appeal as being "income tax and VAT", this appeal is only concerned with VAT. On 15 October 2014 the respondents ("HMRC") withdrew the default surcharges for the periods 03/11 and 06/11 in the total sum of £230.39 leaving the only appealable decision being HMRC's decision to register the appellant for VAT with effect from 1 September 2009 until registration was cancelled on 1 September 2011.

2. Mr Haley very properly addressed the question of whether or not it was indeed an appealable decision. His concern was that if it was not an appealable decision then the appellant had no other right of recourse. In fact we agree with the argument in the Statement of Case to the effect that it is an appealable matter in terms of Section 83(1) of the Value Added Tax Act 1994 ("VATA 94"). It falls squarely within Section 83(1)(a) which states that:

> "… an appeal shall lie to the Tribunal with respect to any of the following matters:-
>
> (a) The registration or cancellation of registration of any person under this Act; …"

Preliminary matters

2. On 14 March 2015, the appellant's representative Mr Johnson wrote to HMCTS enclosing his final witness statement, setting out the grounds of appeal and formally intimating that neither the appellant nor Mr Johnson intended to attend the hearing. That raised a number of issues, the first of which was whether or not the hearing should proceed in the appellant's absence. We had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and in particular to Rules 2 and 33, copies of which are set out at Appendix 1. We had not only the HMRC bundle which we could see from the correspondence had been served on the appellant for the previous hearings, which had been postponed, but also the appellant's own bundle extending to 78 pages. The only authority cited apart from the legislation was *O'Ryan v HMRC*[1] and a copy of that had been served on Mr Johnson on 29 December 2014. In all these circumstances we decided that it was in the interests of justice to proceed with the hearing.

3. There were a number of a preliminary issues in the correspondence, Notice of Appeal and letter of 14 March 2016 and we comment thereon as follows.

Strike out

4. It is alleged that the Tribunal erred in law for failing to strike out HMRC's case. There is no basis for a strike out of HMRC's case. Firstly HMRC's case would never be "struck out" since in terms of Rule 8(7) of the Rules the only possible option is to bar HMRC from taking further part in the proceedings. We annex at Appendix 2 a

[1] TC/2011/02812

copy of Rule 8 of the Rules. At all times HMRC have cooperated in these proceedings and complied with Directions and the case that they have advanced is arguable. Although we are not bound by the decision in *O'Ryan,* that case demonstrates that there was a possibility of success for HMRC depending on the factual findings in this appeal.

Inequality and unfairness

5. It is argued that a litigant in person is disadvantaged because experienced tax counsel could not be engaged. The Tribunal system is designed to facilitate party litigants, whether appearing or not, to have every opportunity of presenting their case. In this instance the appellant is represented by a chartered accountant who has submitted extensive evidence and argument. It is not within the jurisdiction of this Tribunal to decide on the fairness or otherwise of procedural rules for the First-tier Tribunal. The Tribunal's obligation is to ensure that the appeal itself is conducted fairly and justly and we have that very much in mind.

The decision by HMRC is "unconscionable"

6. The appellant relies on the decision in *John Clark v HMRC*[2]. The legislation which was considered in that case was Schedule 1AB, paragraph 3A Taxes Management Act 1970 which deals with the requirements for a claim to special relief in respect of liability to income tax or capital gains tax. In this appeal we are dealing only with registration for VAT and that legislation has no application whatsoever.

HMRC's actions generally

7. The appellant argues that HMRC should pursue the appellant's alleged former partner and it is argued that HMRC's demands are "spurious". The Tribunal has no jurisdiction to review HMRC's dealings with any other taxpayer. We can only look at the appellant's own circumstances, albeit in the context of an alleged partnership.

8. It is alleged that the appellant has been "harassed" by HMRC endeavouring to collect outstanding tax. The Tribunal has no jurisdiction in regard to the collection of tax.

The issue

9. The only issue before the Tribunal for consideration was whether or not HMRC were correct in registering the appellant for VAT for the period September 2009 to September 2011.

[2] 2015 UKFTT 0324 (TC)

Background facts

10. An application for voluntary registration for VAT dated 16 September 2009 was submitted in the name of a partnership "Altered Images" and on the form VAT2 the partners were listed as Adrian Lowther and the appellant. The VAT1 gave details of both Mr Lowther's previous business, also known as Altered Images, and the appellant's connection with a former business with her then husband. The forms VAT1 and 2 had been submitted by the accountants then acting for "Altered Images".

11. The appellant confirms that the signature on the VAT2 was her signature, albeit she now states that she signed it under duress. The VAT1 shows that there was a bank account in the name Altered Images.

12. HMRC processed the application noting that there were no VAT registrations for the listed associated businesses and that the only VAT registered business in the name of Altered Images was a hairdresser which had no connection with the appellant or this business which was described "weight management, indoor cycling and fitness centre.

13. Altered Images was duly registered for VAT from 1 September 2009, as requested, and the VAT return for the period 12/09 gave rise to a repayment claim in the sum of £3,756.56 which was paid. In the following period which was 03/10 there was a further repayment claim of £337.37 which was also repaid by HMRC. Mr Lowther signed both repayment claims. The repayments were paid into the partnership bank account.

14. In a letter dated 12 December 2012, the appellant confirmed that she had worked within Altered Images but had never received any money from the business although she had provided all of the funding to set up the business. That amounted to approximately £60,000. In the letter of appeal dated 14 March 2016, Mr Johnson argued that "the so-called partnership bank account was similarly manipulated". The argument is that the appellant was duped into providing the funds for the business and Mr Lowther controlled the bank account.

15. The appellant's name was also on the lease for the business premises and she settled the £8,000 debt to the landlords after Mr Lowther declared himself bankrupt.

16. The appellant lived with Mr Lowther in her home for a period of approximately two years but the relationship broke down.

17. The appellant completed her self-assessment income tax returns for the year ended 5 April 2010 and 5 April 2011. Both disclosed that she was a partner in Altered Images and disclosed trading losses.

18. Both in respect of indirect tax and direct tax HMRC accept that there was no partnership between the appellant and Mr Lowther from 2011.

19. On 16 March 2012, the appellant contacted HMRC by telephone stating that "I was a partner", "I'm no longer with the business and … I wanted to … change the address …".

20. On 28 June 2012, the appellant again contacted HMRC having received demands for payment. In the course of that telephone conversation she indicated that she was not sure whether she had or had not been a partner in the business. She thought that her position was that she was an ex-partner in the business and that if she had been a partner that had ceased on 31 August 2011. At the point of making that phone call Mr Lowther had allegedly burgled her home and was on bail.

Discussion

21. Mr Haley pointed out at the outset that this was an extremely sad case, that he had sympathy with the appellant's current position but that HMRC and the Tribunal had to look at the position in 2009 until deregistered in 2011. We agree.

22. It is abundantly clear from the documentation produced for the appellant that the argument is that she alleges that "I didn't know what I was signing", that what she had signed had been obtained under false pretences and that she had been subject to undue influence and/or duress. She now alleges that there had never been a partnership albeit it is not denied that she funded the business, worked in the business and was promoted on the internet as being involved in the business.

23. We have carefully considered the documentation before us. The VAT1 and 2 show the correct address which was the appellant's home address and the bank account details. The repayments were made into that bank account. There was nothing in that documentation which would have aroused suspicion in respect of the application. Schedule 1, paragraph 9 VATA 94 provides:-

> "9. Where a person who is not liable to be registered under this Act and is not already so registered, satisfies the Commissioners that he—
>
> (a) makes taxable supplies; or
>
> (b) is carrying on a business and intends to make such supplies in the course of furtherance of that business,
>
> they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him."

24. In signing the Form VAT2 and putting her home address on the VAT1 with details of the bank account the appellant was entitled to apply to be VAT registered and there were no grounds for refusal on the face of the documents and information held by HMRC.

25. The fact that there was an alleged fraud perpetrated by Mr Lowther and/or duress cannot alter that position. There is no doubt, on the basis of her own correspondence and the transcripts of the telephone calls that she was involved with Mr Lowther on a personal basis for a period of approximately two years, that she worked in the business and that she both funded the business and received repayments from HMRC. It is clear from the March telephone call that she knew that she had been a partner and it was now intended that Mr Lowther would continue as a sole trader. The two self-assessment returns are entirely consistent with that position. It would appear that the doubt as to whether or not she had been a partner only came

into the equation once the relationship had deteriorated much further with the police becoming involved. There was no contact with HMRC until the relationship had ended. It is accepted that that was in distressing circumstances.

26. We are satisfied that the legislative criteria for voluntary registration had been satisfied and that HMRC had correctly registered the appellant and Mr Lowther as a partnership trading as Altered Images. If HMRC had not done so there would have been grounds for complaint.

27. In summary, in this instance, HMRC did not decide that there was a partnership and that it was liable to be registered. On the contrary they responded to information presented to them stating that there was a partnership and the request for that partnership to be registered for VAT on a voluntary basis.

28. This appeal is not concerned with any other matters but in the interests of clarity we would confirm that Section 45 VATA Act provides as follows:-

> "45
>
> (1) The registration under this Act of persons—
>
> (a) Carrying on a business in partnership …
>
> maybe in the name of the firm; and no account should be taken in determining for any purpose of this Act whether goods or services are supplied to or by such persons … of any change in the partnership.
>
> (2) Without prejudice to Section 36 of the Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), until the date on which the change in the partnership is notified to the Commissioners a person who has ceased to be a member of a partnership shall be regarded as continuing to be a partner for the purposes of this Act and, in particular, for the purpose of any liability for VAT on the supply of goods and services by the partnership or on the acquisition of goods by the partnership …
>
> (3) … any notice, whether of assessment or otherwise, which is served on the partnership and relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the partnership shall be treated as served also on him.
>
> (4) …
>
> (5) Sub-sections (1) and (3) above shall not affect the extent to which under section 9 of the Partnership Act 1890, a partner is liable for VAT owed by the firm; but where a person is a partner in a firm during part only of a prescribed accounting period, his liability for VAT … shall be such proportion of the firm's liability as may be just."

The effect of that section is that appellant remains liable in respect of the period during which the partnership was voluntarily registered for VAT.

29. In summary the appellant was entitled to apply to be VAT registered and there were no grounds for refusal on the face of the documents and information held by HMRC. Given the length of time that the appellant lived with, and worked with or for, Mr Lowther, the fact that she provided the funding and, at least for a time, believed that she was in partnership with him, points to highly unfortunate circumstances and a distressing relationship breakdown possibly involving breach of trust and other issues but that cannot alter matters retrospectively.

30. In our view, if there was an alleged fraud perpetrated by Mr Lowther, with or without the appellant's knowledge, that cannot affect the registration as a statutory criteria for voluntary registration had been satisfied. HMRC acted promptly in removing the registration once the appellant intimated that the partnership no longer existed.

31. For all these reasons the appeal failed.

32. 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.

ANNE SCOTT

TRIBUNAL JUDGE
RELEASE DATE: 12 APRIL 2016

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

(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—

(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;

€ 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

€ 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—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

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

(b) co-operate with the Tribunal generally.

33.— Hearings in a party's absence

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

Appendix 2

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.

(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—

(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;

(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.

(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.

(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—

(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.

(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.