



[2019] UKFTT 599 (TC)

TC07382

PROCEDURE – application to strike out appeals on basis of absence of jurisdiction or no reasonable prospect of success – application granted in part – application refused in respect of appeal against late payment penalties which should proceed to a hearing

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/07972

BETWEEN

ALLEN JASSON

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE JEANETTE ZAMAN

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 6
September 2019**

The Appellant in person

**Mr Matthew Wilby, litigator of HM Revenue and Customs’ Solicitor’s Office, for the
Respondents**

DECISION

INTRODUCTION

1. Mr Jasson gave notice of appeal to the Tribunal on 9 December 2018, in which he stated that his appeal was about “HICBC, Rental Profit, discriminatory taxation and late payment penalty”.

2. On 8 April 2019 HMRC applied for a case management hearing to consider which of the matters raised by Mr Jasson may be considered by the Tribunal. As was made clear in HMRC’s skeleton argument dated 22 August 2019, this was an application by HMRC to strike out Mr Jasson’s appeal in its entirety.

BACKGROUND

3. The papers before me included correspondence between Mr Jasson and HMRC during the period from 16 December 2017 to July 2019 as well as his complaint to the Revenue Adjudicator (which had also been made within that time-frame). Mr Jasson had stated in correspondence that he had also made a complaint to the Parliamentary Ombudsman in respect of these matters, but I did not have a copy of that correspondence. I have referred below to some but not all of that correspondence; I have, however, carefully considered it in its entirety even if I have not expressly referred to it below.

4. The letters from Mr Jasson to HMRC are expressed variously as being complaints about HMRC and appeals against the tax which has been assessed. HMRC have, quite properly - although Mr Jasson is clearly very dissatisfied with the outcome – dealt with these through their own complaints processes (with the matters having been considered by the Individual and Small Business Compliance complaints team and as appeals made to HMRC).

5. On 14 November 2018 HMRC accepted that an appeal (or appeals) had been made against late payment penalties which had been imposed but rejected the substance of the appeal as they do not accept that Mr Jasson had valid grounds to appeal. They rejected appeals in respect of:

- (1) Rental profit, rejecting a claim to deduct the cost of renting a house for Mr Jasson and his family to live in as a business expense;
- (2) HMRC’s failure to stop making child benefit payments;
- (3) Can’t afford to pay;
- (4) Don’t believe he should be “pressed” to pay; and
- (5) Bitterly resent HMRC for their failure to do their job

6. That letter requested that Mr Jasson withdraw his appeal or provide valid grounds by 14 December 2018.

7. Mr Jasson stated in a letter dated 17 November 2018 that of course he would not withdraw his appeal, and responded to the comments made by HMRC in their letter of 14 November 2018.

8. On 28 November 2018, HMRC rejected Mr Jasson’s appeal against 30 day and 6 month late payment penalties of £112 each imposed in respect of the tax year 2016-2017 on the basis that there are no valid grounds to appeal. That letter also addressed the other matters raised by HMRC (as set out at [5] above), essentially rejecting all of the complaints. That letter stated that Mr Jasson had the right to appeal to the Tribunal within 30 days who will decide whether they perceive the grounds put forward to be valid grounds of appeal.

9. At the hearing, and for the purposes of considering HMRC’s application to strike out the appeal, the parties agreed that Mr Jasson’s appeal should be treated as covering:

- (1) the correction by HMRC (which was made on 7 December 2017) of Mr Jasson’s self-assessment return for the tax year 2016-2017 to include the high income child benefit charge (“HICBC”) of £1,788.80;
- (2) inability to claim a deduction for rental expenses incurred by Mr Jasson during the tax year 2016-2017, which, had he been able to do so, would have completely wiped out the taxable “profit” from UK property for the year of £1,167 on which he was liable for tax of £470.20;
- (3) the tax system’s discrimination against single income households, which was manifested in the way that “high income” is calculated for the purposes of the HICBC and that they only receive the benefit of one personal allowance, with the non-earners allowance being wasted rather than available to the earner;
- (4) unfairness of HMRC making regular overpayments and then demanding lump sum repayment once the overpayments were identified; and
- (5) late payment penalties charged under Schedule 56 Finance Act 2009 (“FA 2009”) for the tax year 2016-2017 of £112 each for 30 days late, six months late and 12 months late. The last of these penalties had not been referred to in HMRC’s letters of 14 November 2018 or 28 November 2018 as it had not at that stage been imposed. However, Mr Wilby accepted that Mr Jasson was also appealing against this penalty and his objections were as for the first two penalties.

RELEVANT LAW

10. Rules 2, 5 and 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “Tribunal Rules”) are set out below:

“Overriding objective and parties’ obligation to co-operate with the Tribunal

2(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. 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;
- (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
- (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—

- (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.

...

Case management powers

5(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction—

(a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment setting down a time limit;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise);

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management hearing;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another tribunal if that other tribunal has jurisdiction in relation to the proceedings and, because of a change of circumstances since the proceedings were started—

(i) the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other tribunal is a more appropriate forum for the determination of the case;

(l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal, as the case may be, of an application for permission to appeal, a review or an appeal.

...

Striking out a party's case

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 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.”

11. Section 31(1) Taxes Management Act 1970 (“TMA 1970) provides:

“31 Appeals: right of appeal

- (1) An appeal may be brought against—
 - (a) any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),
 - (b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),
 - (c) any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or
 - (d) any assessment to tax which is not a self-assessment.”

HMRC’S SUBMISSIONS

12. HMRC considered that all of the matters raised by Mr Jasson’s notice of appeal should be struck out, albeit that Mr Wilby relied on different reasoning for the various components.

(1) Imposition of the HICBC – HMRC had corrected Mr Jasson’s return pursuant to s9ZB TMA 1970 on 7 December 2017. However, Mr Jasson did not reject that correction within 30 days of it being made (as HMRC deny that Mr Jasson’s letter of 16 December 2017 was a rejection as it is framed as a complaint) or amend his self-assessment return pursuant to s9ZA TMA 1970. Section 31 TMA 1970 does not give a taxpayer a right to appeal against a correction or HMRC’s refusal to accept a rejection. Accordingly, the Tribunal has no jurisdiction and this part of the appeal should be struck out under Rule 8(2)(a) of the Tribunal Rules.

(2) Inability to claim rental expenses – The expenditure was incurred on the property in which Mr Jasson and his family lived. Whilst Mr Jasson objected to not being able to claim this as an expense for the purpose of calculating his rental profit, he had not claimed a deduction for this amount in his self-assessment return for the tax year 2016-2017. The tax liability of £470.20 resulted from this self-assessment and s31 TMA 1970 does not give a taxpayer a right to appeal against a self-assessment. Accordingly, the Tribunal has no jurisdiction and this part of the appeal should be struck out under Rule 8(2)(a). Alternatively, such necessary personal expenditure is not incurred “wholly and

exclusively” for the purposes of a trade. As such, this part of the appeal should be struck out under Rule 8(3)(c) as having no reasonable prospect of success.

(3) Discrimination against single income households – The earnings threshold amount is prescribed by statute and the Tribunal has no jurisdiction to consider whether it is discriminatory against single income households (or otherwise). This part of the appeal should be struck out under Rule 8(2)(a).

(4) Unfairness of HMRC making regular overpayments and then demanding lump sum repayment – HMRC is acting in accordance with its statutory obligations and the Tribunal has no jurisdiction to consider the fairness of this approach. This part of the appeal should be struck out under Rule 8(2)(a).

(5) Late payment penalties – If the purported rejection by Mr Jasson of the HICBC correction is accepted, these penalties fall away. If not, these penalties remain and the question is whether there is a reasonable excuse or a special circumstance. HMRC submit there is not – Mr Jasson has refused to pay whilst he disputes the other matters, none of his complaints have been upheld and a refusal to pay in these circumstances cannot be a reasonable excuse or special circumstance. Accordingly there is no reasonable prospect of success and the Tribunal should strike out this part of the appeal under Rule 8(3)(c).

APPELLANT’S SUBMISSIONS

13. Mr Jasson explained that he had been dealing with a long list of issues with HMRC over a number of years. He has complained directly to HMRC, to the Revenue Adjudicator and to the Parliamentary Ombudsman and has been dissatisfied with the outcome, complaining that these processes have simply rubber-stamped HMRC’s position. HMRC have, Mr Jasson submits, repeatedly applied penalties and interests on the amounts demanded and harassed him with repeated demands for payment.

14. Dealing specifically with the matters identified at [9] above:

(1) Imposition of the HICBC – Mr Jasson’s wife receives monthly child benefit for their two children and Mr Jasson had not been aware that there was an income threshold applicable to this. His family is a single-income household and Mr Jasson does not consider that his salary can be said to be a “high income”. Mr Jasson was outraged that HMRC had not treated his letter of 16 December 2017 as a rejection of the correction. He has not used the word “rejection” but his two and a half page letter of complaint makes clear his dissatisfaction with having been notified of the charge and he concludes that letter with “I would like HMRC to re-examine my Tax Assessment in light of these considerations.”

(2) Inability to claim rental expenses – Mr Jasson bought his house in November 2015 but did not move in immediately as the landlord of his (then) current rented accommodation would not release him from the lease on that property. He therefore let out his newly-purchased house for 11-12 months. He considers that taxpayers should be taxed on profit, not on income, and it is thus unreasonable and lacking in common sense that HMRC should treat the entire rental income (net only of mortgage interest) as taxable income for the period and disregard the £970 per month rent he was paying for the flat he was living in. HMRC’s approach is irrational – letting one’s own home and renting a lower cost or otherwise more suitable alternative should be an option available to everyone, especially at the lower end of the income spectrum. He gives the example of someone who needs to take employment for an extended time in a geographically remote

location and doesn't want to sell their home. It is unreasonable that this option is denied due to the absurdity of the tax system.

(3) Discrimination against single income households – The application of income thresholds for earnings income/PAYE and the HICBC are discriminatory against single income households. He considers this costs his family in the order of £4,000 per year (lack of entitlement to a second personal allowance) in addition to the £1,788.20 HICBC.

(4) Unfairness of HMRC making regular overpayments and then demanding lump sum repayment – The imposition of the HICBC serves as one example of this, albeit Mr Jasson has previously suffered similarly in the context of tax credits. HMRC has been utterly inept in carrying out its responsibility of paying benefits. In the context of tax credits, all information required by HMRC was provided, and all changes in circumstances were accurately informed in a timely manner (subject to one mistake by him which HMRC acknowledged they should already have been aware of). In the context of child benefit, there is no excuse for HMRC having not informed Mr Jasson that he would incur the HICBC and it was completely unreasonable to continue making payments of child benefit when repayment would then be demanded at a later date. The making of regular overpayments distorts available income, lump sum repayment is impossible and even repayment at the overpayment rate means that the effective loss of income is double the overpayment rate.

(5) Where payment demands from HMRC derive from administrative errors by HMRC, he should not be expected to pay

(6) Late payment penalties – Where the amounts of tax being demanded by HMRC are being disputed (both with HMRC and other review bodies), HMRC should not be pressing for payment or imposing penalties for late payment. Mr Jasson also makes the point that the tax which has been imposed was unexpected and he is not able to pay it.

DISCUSSION

15. As explained at the hearing, HMRC's application to strike out Mr Jasson's appeal must be considered in respect of each of the separate matters raised.

Imposition of the High Income Child Benefit Charge

16. The HICBC was imposed by way of a correction to Mr Jasson's self-assessment return for the tax year 2016-2017 in a letter dated 7 December 2017. I have not seen a copy of that letter, but its existence, date and substance are common ground.

17. HMRC state that the disagreement between the parties is whether or not Mr Jasson's letter of 16 December 2017 is a "rejection" of HMRC's correction within s9ZB TMA 1970. If it is not, and given that Mr Jasson has not amended his self-assessment return, HMRC submit that the matter is not appealable under s31 TMA 1970. If it was, however, a "rejection" then HMRC have wrongly refused to accept it as such. However, again, such a refusal is not appealable under s31 TMA 1970.

18. I have considered carefully whether to examine the letter of 16 December 2017 with a view to reaching a conclusion as to whether or not it was a rejection within s9ZB, and thus whether or not HMRC were correct in failing to treat it as a rejection of the correction which HMRC had made. However, neither s31 TMA 1970 nor any other provision give the Tribunal jurisdiction to consider an appeal against a correction made by HMRC to a self-assessment return, nor against a refusal by HMRC to accept a rejection of such a correction. My reaching a conclusion either way on the letter of 16 December 2017 would be of no assistance in resolving the question of jurisdiction. The Tribunal does not have jurisdiction in relation to the matter raised and accordingly I must strike it out under Rule 8(2)(a).

Inability to claim rental expense as a deduction when computing rental profit

19. Mr Jasson completed his self-assessment for the tax year 2016-2017 online. The “Tax Calculation” which was automatically generated by HMRC’s systems shows that the amounts he entered gave a “Profit from UK land and property” of £1,167. The total taxable income for the tax year less the total tax deducted gave a “Total Income Tax due” amount of £470.20. It is that amount against which Mr Jasson seeks to appeal.

20. At the hearing Mr Jasson explained that, as set out in his submissions outlined at [12] above, when he completed his self-assessment the online form did not allow him to enter, as a deductible expense, the expenses he was incurring on renting the flat in which he and his family were living. Therefore, whilst he fundamentally disagrees in principle with the legislation and HMRC’s approach to calculating rental profits, he did not in fact claim a deduction for the expense (of £970 per month) which he argues ought to be allowable. If he had been able to do so, Mr Jasson indicated that the expense would have wiped out his rental “profit” of £1,167.

21. The tax liability of £470.20 results from Mr Jasson’s self-assessment and s31 TMA 1970 does not permit an appeal to be made to the Tribunal against a self-assessment. I therefore do not have jurisdiction and must therefore strike out this part of the appeal under Rule 8(2)(a).

22. I do not therefore consider HMRC’s alternative submission.

Discrimination against single income households and unfairness of HMRC making regular overpayments and then demanding lump sum repayment

23. I consider these two grounds of appeal together, as they essentially amount to a challenge to the fairness of the tax system and/or HMRC’s approach to fulfilling its statutory obligations.

24. These grounds thus raise the question of the extent to which this Tribunal is entitled to take into account matters of public law in exercising its jurisdiction. There is a considerable body of authority on this matter, notably *Wandsworth LBC v Winder* [1985] AC 461, *Rhondda Cynon Taff BC v Watkins* [2003] 1 WLR 1864, *Oxfam v HMRC* [2009] EWHC 3078, *Hok Limited v HMRC* [2012] UKUT 363 (TCC), *HMRC v Noor* [2013] UKUT 71 (TCC) and *The Trustees of the BT Pension Scheme v HMRC* [2015] EWCA Civ 713.

25. These decisions were considered by the Upper Tribunal in *R & J Birkett v HMRC* [2017] UKUT 0089 (TCC), and the Upper Tribunal, having reviewed the authorities, concluded as follows:

- (1) this Tribunal has no general judicial review jurisdiction;
- (2) it may in certain cases have to decide questions of public law either in the course of exercising the jurisdiction that it does have or to determine whether it has jurisdiction in the first place;
- (3) in each case, therefore, in assessing whether a particular public law point is one that the Tribunal can consider, it is necessary to consider the specific jurisdiction that the Tribunal is exercising and then to determine whether the particular public law point that is sought to be raised is one that falls to the Tribunal either in exercising that jurisdiction or in determining whether it has jurisdiction; and
- (4) since the Tribunal is a creature of statute, this is ultimately a matter of statutory construction.

26. The question is whether this Tribunal has jurisdiction to hear Mr Jasson’s appeal on these grounds. Whilst the authorities are clear that this is a matter of statutory construction, that does in this instance rather beg the question as to which statute I should be seeking to construe. I am not aware of any statutory provisions in the context of the HICBC charge specifically,

HMRC's general functions in respect the management and collection of taxes, or the appeals provisions in section 31 TMA 1970 which could open the door to consideration of these arguments by this Tribunal.

27. Given that I only have the jurisdiction which has been conferred by statute, I have to conclude that there is no jurisdiction and I must strike out these appeals under Rule 8(2)(a).

Late payment penalties

28. Mr Jasson appeals against the late payment penalties which have been imposed. He does not dispute that these penalty assessments have been received, nor that he is late paying the tax. However, he argues that where the amount of the tax is disputed (not just in an appeals process against HMRC but also to the Revenue Adjudicator and the Parliamentary Ombudsman) then he should not be required to pay that tax until the matter is resolved. He also argues that he is not able to pay the tax which has been demanded.

29. HMRC ask that the Tribunal exercise its discretions to strike out this appeal on the basis that it has no reasonable prospect of success.

30. If this were to proceed to a hearing, Mr Jasson would be seeking to rely on having a reasonable excuse or special circumstances:

(1) Paragraph 16 of Schedule 56 FA 2009 provides that liability to a penalty does not arise in relation to a failure to make a payment if the taxpayer satisfies HMRC or the Tribunal that there is a reasonable excuse for the failure. For this purpose, neither an insufficiency of funds (unless attributable to events outside the taxpayer's control) or reliance on a third party (unless the taxpayer took reasonable care to avoid the failure) are capable of being a reasonable excuse (paragraph 16(2)); and

(2) Paragraph 9(1) allows HMRC to reduce a penalty if they think it is right because of special circumstances. "Special circumstances" is undefined save that, under paragraph 9(2), it does not include ability to pay, or the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another. The Upper Tribunal has recently stated that this Tribunal should resist the temptation to add a judicial gloss to the phrase.

31. Considering the above, to the extent that Mr Jasson's grounds rely upon inability to pay, it is clear that this cannot be a reasonable excuse (given that it has not been suggested this is attributable to events outside of his control) or a special circumstance. However, the other arguments raised by Mr Jasson are not expressly excluded. HMRC may dispute that Mr Jasson will be able to establish that they amount to a reasonable excuse or that HMRC's decision that there are no special circumstances is flawed. These provisions rely on findings of fact being made by the Tribunal and it seems to me that, in the absence of such findings being made, it would not be appropriate for me to strike out Mr Jasson's claim as having no reasonable prospect of success. Accordingly, I do not do so.

CONCLUSION

32. For the reasons given above, Mr Jasson's appeals against:

(1) the correction by HMRC on 7 December 2017 of Mr Jasson's self-assessment return for the tax year 2016-2017 to include the HICBC of £1,788.80;

(2) HMRC's refusal to treat his letter of 16 December 2017 as a rejection of that correction;

(3) the tax liability of £470.20 which was self-assessed in his return for the tax year 2016-2017;

- (4) the tax system's discrimination against single income households; and
 - (5) the unfairness of HMRC making regular overpayments and then demanding lump sum repayment once the overpayments were identified,
- are STRUCK OUT.

33. HMRC's application to strike out Mr Jasson's appeal against the late payment penalties imposed under Schedule 56 FA 2009 in respect of the tax year 2016-2017 is refused. That appeal will be heard by this Tribunal. Directions in respect of this appeal will be issued to the parties separately.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

34. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

RELEASE DATE: 24 SEPTEMBER 2019