



TC06127

Appeal number: TC/2015/04317

*INCOME TAX- procedure- application to strike out under Rule 8(2)(a) -
Tribunal's jurisdiction over late payment interest charged- appeal struck out*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KENAN MURSALOGLU

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE THOMAS SCOTT

**Sitting in public at Taylor House, Rosebery Avenue, London on 19 September
2017**

The Appellant in person and his representative Mr M Moalemi

Mr Simon Bates, Presenting Officer, for the Respondents

DECISION

1. This was an application by HMRC that the Tribunal exercise its powers under Rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“ the Tribunal Rules”) to strike out the appellant’s appeal on the grounds that the Tribunal had no jurisdiction in relation to the proceedings.

Background

2. During the years 2005-06 to 2011-12 Mr Mursaloglu was in business as a wholesaler of kebab meat and related products. In 2011 HMRC opened an enquiry into his tax affairs.

3. In November 2013 HMRC issued income tax assessments and related penalty determinations covering the years 2005-06 to 2012-13.

4. In February 2015 HMRC accepted a late appeal and a request by Mr Mursaloglu for a statutory review. The HMRC review upheld the assessments and penalties, and in July 2015 Mr Mursaloglu appealed to the Tribunal against that decision.

5. Discussions between the two parties continued, culminating in August 2016 with a settlement by agreement covering all outstanding years for approximately £13,000 of income tax with penalties reduced to nil.

6. HMRC sought statutory interest of £2,011.13 on the tax paid late.

7. Mr Mursaloglu objected to the interest being charged, and sought HMRC’s agreement to waive it. HMRC stated that the charge arose automatically under the relevant statutory provisions, and they had no power to waive it.

8. After further discussions, Mr Mursaloglu appealed to the Tribunal against the interest charged.

Discussion

9. Both parties agreed that as regards the income tax due for the relevant years, a settlement by agreement had been reached under section 54(3) of the Taxes Management Act 1970 (“TMA”). My consideration of the correspondence with which I was presented confirmed that to be the case.

10. Mr Mursaloglu did not seek to argue that the interest sought by HMRC was incorrectly calculated on the basis of the settlement. Rather, he argued that interest should not properly be charged at all, on the basis that he had paid the sum agreed in full and promptly following the August 2016 settlement. Until that date, he argued, no debt was due, so no interest could properly accrue.

11. The issue before me was whether or not the Tribunal had jurisdiction in relation to Mr Mursaloglu’s appeal against the statutory interest charged. I must decide that issue, and if I consider that it does not, I must strike the appeal out under Rule 8(2)(a) of the Tribunal Rules.

5 12. The interest in this appeal was calculated and arose under section 86 TMA and, for periods after 30 October 2011, section 101 of the Finance Act 2009.

13. The wording of section 86 TMA and section 101 of the Finance Act 2009 is not identical, but in both cases the liability to interest at the relevant statutory rate arises automatically.

10 14. No right of appeal to this Tribunal is provided against interest arising under either provision.

15 15. The absence of any jurisdiction on the part of this Tribunal to consider an appeal against interest arising under the relevant statutory provisions is confirmed by the decision of the Upper Tribunal in *HMRC v Neil and Megan Gretton* [2012] UKUT 261 (TCC). Judge Herrington stated, at [12] of that decision:

“There is no discretion on the part of the First-tier Tribunal to determine that interest should not be payable.”

16. In the absence of any appeal rights against the interest arising, I conclude that this Tribunal does not have jurisdiction in relation to this appeal.

20 17. Under Rule 2(4) of the Tribunal Rules, I must not strike out the appeal “without first giving the appellant an opportunity to make representations in relation to the proposed striking out”. I am satisfied that Mr Mursaloglu has been afforded that opportunity, both in his representations to HMRC and in the proceedings before me.

25 18. I wish to make one observation. I explained to Mr Bates that I fully expect HMRC to ensure that all the facts of this case are considered by HMRC’s “interest review unit”. That unit should consider whether there are factors in this case which should lead to a reduction in the interest charge, including the offer made by Mr Mursaloglu in December 2013 to settle for a sum which exceeded that eventually agreed under section 54.

30 19. However, as with any other potential avenues of complaint which might be available, such a review would be a matter outside the jurisdiction of this Tribunal.

20. I note that the absence of jurisdiction in a case such as this was confirmed by Judge Thomas in *Janak Shah v HMRC* [2015] UKFTT 0555 (TC).

Decision

35 21. For the reasons given, the appeal is struck out under Rule 8(2)(a) of the Tribunal Rules.

22. 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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**THOMAS SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 25 SEPTEMBER 2017

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