



TC06492

Appeal number: TC/2016/07194

INCOME TAX – application to strike out appeal on the basis that the First-tier Tribunal does not have jurisdiction to hear an appeal based on the terms of an extra-statutory concession or an appeal against a self-assessment – application upheld

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JAMES BELL

Appellant

- and -

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

TRIBUNAL: JUDGE TONY BEARE

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on
30 April 2018**

Mr M de Silva, of TaxPro Consultancy for the Appellant

Mr C Fleming, officer of HM Revenue and Customs, for the Respondents

DECISION

1. This decision relates to an application by the Respondents to strike out an appeal by the Appellant against an assessment to income tax in the amount of £24,926.40 in respect of the tax year of assessment ending 5 April 2010.

2. The Appellant alleges that the Respondents should have waived the liability to income tax in question because he is entitled to the benefit of Extra-statutory Concession A19 (“ESC A19”). That concession potentially applies where various conditions are met, one of which is that, before being notified of the relevant tax arrears, the taxpayer in question must have formed the reasonable belief “that his or her tax affairs were in order”.

3. The Appellant considers that, on the facts in this case, prior to his being made aware of the tax arrears in question, he could reasonably have believed that his tax affairs were in order given the information about his earnings that was held by the Respondents and the fact that he had not been informed of the tax arrears in question by the Respondents at an earlier stage.

4. The Respondents take the contrary view. The Respondents allege that, although there have been errors on their part in processing and acting on the information which was in their possession, it was not reasonable for the Appellant to have concluded, prior to his being informed of the tax arrears in question, that his tax affairs were in order given how much he was earning and how much tax he was paying.

5. More significantly, the Respondents allege that the First-tier Tribunal does not have the jurisdiction to consider that question and have accordingly applied for the Appellant’s appeal to be struck out. This is for two reasons.

6. First, the Respondents allege that the First-tier Tribunal has no jurisdiction to consider whether or not the Respondents have acted erroneously or unreasonably in failing to apply an extra-statutory concession because the remit of the First-tier Tribunal is confined to the appropriate application of the tax legislation. Thus, if a taxpayer wishes to challenge the Respondents’ refusal to apply ESC A19 in this case, the appropriate manner for him to do so is by way of proceedings for judicial review, assuming that he is not prevented from doing so by the application of any applicable time limits. It is not a matter which can be addressed by the First-tier Tribunal because it is outwith the powers conferred on the First-tier Tribunal by statute. (The First-tier Tribunal was created by Section 3 of the Tribunals, Courts and Enforcement Act 2007 “for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act”.)

7. Secondly, the Respondents allege that the First-tier Tribunal has no jurisdiction to hear an appeal against a liability to income tax that has been self-assessed. The Respondents argue that a taxpayer’s rights of appeal against a liability to income tax are set out in the terms of Section 31 of the Taxes Management Act 1970 (the “TMA”) and that that section does not provide for an appeal against a self-assessment.

8. If the First-tier Tribunal does not have jurisdiction to consider the Appellant's appeal, then, unless I am able to transfer the proceedings to another tribunal that does have that jurisdiction, I am obliged by Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules") to strike out the appeal.
5 As there is no other tribunal that has the jurisdiction to consider the Appellant's appeal, I am bound to strike out the appeal if the First-tier Tribunal lacks that jurisdiction.

9. Given the conclusion that is set out below, I will not rehearse in this decision the events which have led to the present application. Suffice it to say that the
10 Appellant does have a justifiable grievance in relation to the manner in which his tax affairs have been handled by the Respondents. That grievance has been the subject of numerous reviews within the Respondents and they have both acknowledged their failings and made an ex gratia payment to the Appellant in respect of them.

10. However, none of that is relevant to the question of whether or not the First-tier
15 Tribunal has the jurisdiction to consider the Appellant's appeal in this case and, in that respect, I consider that the Respondents are correct in relation to both of their contentions.

11. It is well-established that the First-tier Tribunal does not have the power to consider whether the Respondents have acted erroneously or inappropriately in
20 refusing to apply an extra-statutory concession. At the hearing, the Respondents referred me to the decision of Judge Bishopp in the First-tier Tribunal in *Prince and Others v The Commissioners for Her Majesty's Revenue and Customs* [2012] UKFTT 157 (TC) as support for this proposition. Whilst that decision is not technically binding on me because it is a decision of the First-tier Tribunal, I agree with the views
25 set out in it in relation to the powers of the First-tier Tribunal to consider the application of an extra-statutory concession.

12. More significantly, although it was not cited to me at the hearing, there are decisions by the Upper Tribunal and the Court of Appeal to the same effect – see
30 *Trustees of the BT Pension Scheme v The Commissioners for Her Majesty's Revenue and Customs* [2015] EWCA Civ 713 at paragraphs [125] et seq. (see paragraph [132] in particular) – and those are binding on me. In that case, both the Upper Tribunal and the Court of Appeal held that the jurisdiction of the First-tier Tribunal (and the Upper Tribunal for that matter) did not extend to a common law challenge to the fairness of the treatment afforded to a taxpayer by the Respondents' refusal to apply an extra-
35 statutory concession.

13. The above means that it is, strictly speaking, unnecessary for me to reach any view on the Respondents' second argument. However, I agree with the Respondents that a taxpayer's rights of appeal in respect of an income tax liability are prescribed by Section 31 and that a self-assessment is not one of the four categories of
40 circumstances that are set out in that section which entitle a taxpayer to make an appeal.

14. For the reasons set out above, I uphold the application by the Respondents to strike out the Appellant’s appeal.

15. Given that the First-tier Tribunal lacks the jurisdiction to entertain the Appellant’s appeal, I will not express any view on the substantive issue which is in dispute in the appeal – that is to say whether or not the Appellant’s belief, prior to his being notified of the tax arrears in question, “that his or her tax affairs were in order” was a reasonable belief.

16. 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 Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 9 May 2018