[2021] UKFTT 0062 (TC)

**TC08047**

*PROCEDURE - Application to notify an appeal out of time - Dispute as to length of delay - Consideration of reasons for the delay - Evaluation of the circumstances - Discussion of the Morse Review - Application dismissed - Recovery of debt abroad and observation on HMRC's Care and Management Powers*

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**Appeal number: TC/2018/01628**

**BETWEEN**

**DR PRADIP KUMAR SHETH** **Applicant**

**-and-**

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

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL**

**Sitting in private on 26 February 2021**

**The parties agreed that this matter can be dealt with on the papers, and without a hearing, and I considered that it was in the interests of justice to deal with it in this way.**

## DECISION

**INTRODUCTION**

1. This is my decision in relation to Dr Sheth's application, contained in a Notice of Appeal dated 5 February 2018, for permission to make a late appeal ('**the Application'**).

2. The substantive appeal, if I allow it to be advanced, is against two discovery assessments (**'the Assessments'**), originally issued on 10 February 2014, and made pursuant to sections 29(1) and (5) of the Taxes Management Act 1970.

3. The Assessments related to 2009/10 (£27,120.90) and 2010/11 (£3,334.60, but subject to an application by HMRC, but only if Dr Sheth is permitted to appeal out of time, to increase this latter assessment to £18,315.60).

4. As the cover letter to the Assessments explained, the Assessments sought to bring into charge, in addition to income already taxed, further sums that Dr Sheth received in those tax years which arose from tax avoidance arrangements which he entered into with The Sanzar Solutions IOM Partnership and The Darwinpay Partnership.

5. The catalyst for Dr Sheth's engagement with the Tribunal in February 2018 was HMRC's efforts, through its International Debt Collection Team, to recover the sums assessed, as a debt, against Dr Sheth in India, where he now lives. Those efforts had given rise, in May 2016, to a demand for payment from HMRC, and, in October 2017, to a Notice of Demand to Dr Sheth from the Tax Recovery Officer in Rajkot.

6. By way of a Notice dated 8 May 2018 (amended on 8 February 2019), HMRC opposes Dr Sheth's Application. HMRC made, and then withdrew (it seems to me correctly) a cross-application to strike-out the appeal on the basis that the Assessments were not capable of being appealed, having been certified to the Indian revenue authorities for recovery as a debt.

7. Although this case was (or may at one time have been) reserved to Judge Mosedale, I am satisfied that I can deal with it fairly and justly on the basis of the papers before me.

8. I have been provided with a 720 page hearing bundle. I have also considered an email trail from Dr Sheth, ending on 24 January 2021 (i.e., just over a month ago) in which he makes further representations to HMRC and the Tribunal in relation to the Independent Loan Charge review (the so-called Morse Review) published in December 2019, and the UK Government's response to it.

9. For the reasons set out more fully below, I have decided not to allow this appeal to be notified out of time. The effect of my decision is that there is no appeal against the Assessments, and the Assessments therefore stand as unchallenged. But, in my view, there was significant error by HMRC in its approach to Dr Sheth's challenge to the Assessments, and especially his letter of 1 August 2015, which in turn caused significant (avoidable) confusion - which the Tribunal has been trying to untangle for the last two years - and consequent (equally avoidable) delay.

**THE BACKGROUND**

10. Dr Sheth's position is that he first received notice of the Assessments in late November 2014, and thereafter was in communication with HMRC about them.

11. He received a Self-Assessment Statement of Account dated December 2014 which records the assessments for 2009/10 and 2010/11 as 'suspended'. Consistently with this, it records late payment penalties, surcharges and interest, as also suspended. Nothing is recorded as 'collection suspended' (as opposed to 'suspended') and the sums are netted off, leaving an 'Amount to Pay' of zero, and the statement 'You have nothing to pay'.

12. He wrote to HMRC on 17 December 2014 and an officer of the Counter-Avoidance Unit responded on 2 April 2015. HMRC told him on 2 April 2015 that because he had not lodged an appeal against either assessment 'each are final and conclusive'. He was offered a settlement opportunity. According to his postal receipts, Dr Sheth wrote to Counter-Avoidance on 9 June 2015, simply stating that he did not owe any money, and pointing to the Statement of Account.

13. He attaches what is said to be an email from a named officer of HMRC's Non-Resident Recovery Unit dated 3 July (?) 2015 confirming that his self-assessment record was up to date .. No further payments are required." On 5 July 2015, Dr Sheth responded saying "THANK YOU VERY MUCH for your this email which relieve me from lots of stress."

14. Shortly thereafter, he received a letter from HMRC's Debt Management dated 24 July 2015 explaining that the amounts due for 2009/10 and 2010/11 had been shown as 'collection suspended' so as to allow Dr Sheth to appeal the figures if he believed them not to be correct. On 24 July 2015, Assistant Officer Sims wrote that 'As no appeal was received within the given timescale the amounts have now been released for collection'.

15. Dr Sheth sent an appeal dated 1 August 2015 to HMRC, but did not receive any reply, decision or review or even an acknowledgement that it had been received. According to his postal receipts, he sent something to Self-Assessment on 3 August 2015.

16. In Paragraph 4.9 of its Statement of Case (page 65 of the bundle) HMRC says that Dr Sheth did appeal, but "with regard to the recovery of the debt only ... [noting] his age, health and financial circumstances as reasons as to why the debt should not be pursued. Additionally, the Appellant indicated that HMRC is at fault for approving the scheme and assigning a DOTAS number. For the avoidance of doubt, no such approval was given and the DOTAS number is not a signal of any such approval by HMRC."

17. On several occasions, the file was placed before Judges who have sought to winnow out the actual grounds of appeal being put forward.

18. On 18 December 2018, Judge Mosedale rejected, correctly, as justiciable grounds of appeal (i) ability to pay the Assessments and (ii) the alleged misrepresentation of the scheme to Dr Sheth by its promoters, including the representation that the fact it had a DOTAS number meant it had been approved by HMRC. She gave Dr Sheth 28 days in which notify HMRC and the Tribunal "of any reasons he has for thinking that the assessment, or the amount of the assessment, is wrong in law." Judge Mosedale went on to add "This is very important as there is no point in the Tribunal accepting an appeal by Dr Sheth if he has no prospect of success because there are no arguable grounds of appeal". I respectfully agree.

19. On 11 January 2019 (misdated 2018), Dr Sheth wrote at length to the Tribunal. Summarising, and dealing in this decision only with relevant issues, it seems to me that he did seek to challenge - albeit not with great focus or clarity - whether the Assessments had been raised in time (Point 1 - page 117 of the bundle), and he again raised HMRC's Statement of Account showing a nil balance (Point 5 - same page).

20. On 8 February 2019, HMRC filed an amended Notice, to take account of Judge Mosedale's comments and withdrawing their cross-application.

21. On 15 February 2019, the file was placed before a Judge (it seems as if this was Judge Mosedale, but I cannot be sure) who wrote "..the Judge is prepared to accept that the grounds of appeal the appellant may be putting forward is an argument that the assessment was (allegedly) not made or notified to him in time and/or (allegedly) the assessment was not valid as not notified to him." He was asked to confirm whether those were his grounds of appeal, and to explain the basis for them.

22. Dr Sheth wrote on 28 February 2019. He did not really seek to engage with the Tribunal's letter of 15 February 2019, but instead sought to raise (again), as 'a second reasonable ground of appeal', the receipt of correspondence from HMRC saying that he had nothing to pay.

23. Judge Mosedale dealt with this aspect of the matter on 18 April 2019 when she noted that what had been described by Dr Sheth as 'a second reasonable ground of appeal' did not enjoy reasonable prospects of success. Judge Mosedale remarked "this clearly related to debt collection and not liability and in any event clearly shows the collection of debt is only suspended".

24. Insofar as it does now fall on me formally to adjudicate on that matter, I respectfully agree with Judge Mosedale.

25. I have a degree of sympathy with Dr Sheth here, because the Statement of Account, on its face, is confusing and certainly gives the impression that nothing was due. The wording 'suspended' (or even 'collection suspended') may not, without more, convey to the taxpayer (and did not convey to Dr Sheth) that all that had happened was that HMRC had paused collection. HMRC had not cancelled the tax assessed and due.

26. Judge Mosedale's reasoning is on the footing that it would be wrong to treat that Self-Assessment Statement as a once-and-for-all and binding representation by HMRC that no tax was due and owing for 2009/10 and 2010/11, so as to bar HMRC from thereafter saying that tax was due. I respectfully agree.

27. There are several reasons why an appeal on the basis of the Statement of Account is not sustainable and, if advanced, would have to be struck-out:

(1) Generally, an Officer of HMRC cannot estop HMRC from the recovery of tax owed;

(2) Even if that were wrong, a challenge on the basis that HMRC had said something to a taxpayer which generated a legitimate expectation on the part of the taxpayer that no tax was payable, is a challenge which is not justiciable in this Tribunal, but only in the Administrative Court of the High Court (and would now, even in that Court, be long out of time - the usual time limit for a claim for judicial review being three months).

28. On 17 September 2019, Judge Mosedale, identifying that Dr Sheth seemed to be raising a point as to the timing of the discovery assessments, directed evidence as to the assessments, and any statement from HMRC explaining the discovery.

29. There is a generic witness statement (i.e, not particular to this appeal) from Lesley Jane Stropp, a Higher Officer in the Counter Avoidance Directorate, dated 11 October 2017.

30. There is a witness statement from Andrew John Finch, dated 5 April 2018, filed in relation to a different appeal: Stephen Hoey which dealt with discovery assessments raised on a contractor loan scheme. That appeal was heard by the Tribunal (Judge Philip Gillett) in July 2019, and dismissed in a decision released on 29 July 2019 and reported at [2019] UKFTT 489 (TC).

31. There is a witness statement Brian Forbes, an officer of the Counter-Avoidance Directorate, dated 26 November 2019. It is given in connection with this appeal. I have had particular regard to this statement. He describes the Sanzar Solutions and DarwinPay 'Contractor Loan' schemes, sets out, in appropriate detail, HMRC's side of its communications with Dr Sheth, his tax returns for the relevant years of charge, and the raising of the discovery assessments.

**THE LAW**

32. The ordinary time limit for filing an appeal is 30 days. The Tribunal has a discretion to allow a late appeal: section 49(2)(b) of the Taxes Management Act 1970.

33. In *Martland v HMRC* [2018] UKUT 178 (TCC), the Tax and Chancery Chamber of the Upper Tribunal gave guidance as to the correct approach to determining applications of this kind. That guidance is binding on me. The starting point is that permission should not be granted unless this Tribunal is satisfied on balance that it should be.

34. I must apply a three stage test:

(1) Establish the length of the delay; is it very short, or is it serious and significant?;

(2) Establish the reason(s) for the delay;

(3) Evaluate all the circumstances of the case, including an assessment of the merits of the reasons given for the delay, and the prejudice to each party which would be caused by giving or refusing permission, but taking into account "the particular importance of the need for litigation to be conducted efficiently ... and for statutory time limits to be respected" (Martland, at Para [45]).

35. As part of the overall evaluative exercise, I can have also regard to any obvious strength or weakness of Dr Sheth's case, but without conducting a 'mini-trial'. I can, where appropriate, decide disputed facts on the papers, applying the civil standard of proof (which is the balance of probabilities - i.e., whether something is likelier than not)

**SERVICE OF THE ASSESSMENTS**

36. I am working on the footing, most advantageous to Dr Sheth, and given his residence in India and the additional posting time that will entail, that the time runs from the communication of the assessments.

37. HMRC's primary case is that the Assessments were served by post on Dr Sheth at his last known address (postcode N12 8TD) by letter dated 10 February 2014. Copies were apparently also sent to an agent, No Worries Company Services Ltd, on that same date, but so little is otherwise said, by anyone, in the papers about this aspect of it, that I cannot make any findings as to who No Worries were; and what they did with anything they received.

38. HMRC's secondary case is that the Assessments were re-issued under cover of a letter dated 4 November 2014.

39. HMRC's own notes (bundle page 148) show that Dr Sheth (described as 't/p' for taxpayer) phoned HMRC on 26 March 2014 'enquiring re revenue assessments raised for 2010 and 2011', but it is not entirely clear from the short note what was being discussed and (for example) I can read into that note an inference that Dr Sheth had by that point already received the Assessments.

40. On 31 March 2014, the same note records that Dr Sheth was told that the assessments were to be sent to India (which is inconsistent with his having already received them), and the Indian address was put onto HMRC's system: screen shot at page 149. The address was altered on 31 October 2014. Drawing inferences, it seems to me that something had come to Dr Sheth's notice by 26 March 2014, but I do not know what.

41. On 4 November 2014, an Officer of HMRC's Counter-Avoidance Directorate wrote to Dr Sheth at an address in India. HMRC wrote "I refer to your recent contact in which you advise that you have still not received the calculations and assessments for the years 2009/10 and 2010/11. Please find enclose (sic) further copies."

42. In the circumstances of this appeal, I do not need to consider the apparent service in February 2014.

43. I do find that the Assessments were sent to Dr Sheth under cover of the letter of 4 November 2014 and were therefore received by him by late November 2014 (at the latest). I do not need to establish the precise date.

44. The Notices of Assessment carry, on the second page, a section headed "What to do if you disagree", informing the recipient of appeal rights, and the time within which an appeal had to be lodged.

45. Dr Sheth wrote to HMRC on 17 December 2014 thanking HMRC for sending him "the copy of reassessment of my tax returns of year 2009-10 and 2010-11."

46. I am satisfied that the Assessments, as re-issued, were served in late November 2014. They were the catalyst for Dr Sheth writing to HMRC on 17 December 2014. He made certain representations, obviously meant as a challenge but not expressed as an appeal. I have read that letter very carefully. It raised a number of matters about Dr Sheth's health and ability to pay. It ended by saying "If you still think and feel that I have to pay the above tax due, please guide me how should I pay the due tax as I do not have any source of income and I am 68 year retired person."

47. On 2 April 2015 HMRC responded to that letter, writing that it was now treating the Assessments as 'final and conclusive', no appeal having been lodged, and would be a matter for debt recovery.

**THE LENGTH OF DELAY**

48. The Notice of Assessments contained the appeal rights. The first stage was for Dr Sheth to write to HMRC within 30 days. That is what he did, with his letter of 17 December 2014, which I am prepared to treat as being within 30 days of receipt of the Assessments. He did not then hear back from HMRC until 2 April 2015.

49. Unfortunately, what then happened is that Dr Sheth did not ask for a review, or for this Tribunal to decide the matter. This was perhaps prompted by HMRC's assertion - in the circumstances, it seems to me mistakenly - on 2 April 2015 that "you did not lodge an appeal against either assessment and so each are final and conclusive".

50. That was wrong on the part of HMRC because it disregards the following facts:

(1) Dr Sheth had told HMRC that he did not receive the Assessments, sent to an address in the UK, in February 2014, and it was possible (even then) to see that time (at least arguably) may not have begun to run against him until November 2014; and

(2) Dr Sheth had written on 17 December 2014, and was thereafter waiting to hear from HMRC for four months.

51. But then Dr Sheth simply reverted to HMRC, in June 2015, making the point about what he had understood from the December 2014 Statement of Account. But he was put right by HMRC on 24 July 2015, when he was told that collection had been suspended only to allow him to appeal. I have already remarked why that Statement of Account was not, despite what it said, sufficient in law to have bound HMRC not to then collect the tax assessed.

52. On 1 August 2015, Dr Sheth wrote a letter, and posted it to HMRC on 3 August 2015. That is headed "SUB[JECT] - APPEAL AGAINST DECISION OF RECOVERY OF YEAR 2009-10 AND 2010-2011 SELF ASSESSMENT." As part of that letter, Dr Sheth wrote: "Second thing I would like to ask and request that whether this recovery is with in the stipulated time under the rules of HMRC." (bundle page 193). He went on to say "They have

accepted our Income tax return in 2009-10 and started recovery retrospectively after 5 years this is also not acceptable" (bundle page 195).

53. There was no apparent response to that letter. A letter from HMRC dated 9 September 2015 makes no reference to it, but instead refers to a letter dated 9 June 2015.

54. So, as at 1 August 2015, responding to HMRC's communication of 24 July 2015, Dr Sheth had made what he described as an appeal, but had sent it to HMRC and not to the Tribunal. Having received it, HMRC do not seem to have engaged with it (for example, by considering whether it constituted an appeal, or even a request for a review) until a phone call on 6 October 2015 (page 269 of the bundle) where HMRC's officer explained to Dr Sheth that they would 'look into the concerns he's raised in his letter of 1 August 2015'.

55. This causes me to express doubt as to the way in which HMRC seek to characterise this Notice of Appeal as being brought years out of date. I disagree. Something went wrong: Dr Sheth had (within a fortnight or so of receiving the Assessments) written to HMRC challenging them (his letter of 17 December 2014); HMRC had taken until 2 April 2015 to respond; Dr Sheth was labouring under the misapprehension that the Statement of Account meant that nothing was owed; he was disabused of that mistaken belief on 24 July 2015; and came back to HMRC on 1 August 2015, in a letter which then seems not to have been actioned save for a remark some months later that his concerns would be 'looked into'.

56. This is a tangle. I consider that there was lateness, and delay, but it was, in my view, from 1 May 2015 (being 30 days after 2 April 2015) to 1 August 2015 - a period of three months. That is serious delay in the context of a step which otherwise had to be taken within 30 days.

57. Thereafter, there is then considerable further delay until the filing of a Notice of Appeal, in February 2018.

**THE REASONS FOR THE DELAY**

58. This aspect of this Application is also challenging.

59. My reading of the situation is that there was muddle in 2015. But Dr Sheth knew that he had written to HMRC on 1 August 2015, knew that he had sent that letter to HMRC on 3 August 2015, and knew that HMRC did not seem to have received it; or, if received it, to have actioned it.

60. Instead of sending the letter of 1 August 2015 again, or (even) asking HMRC "have you read what I said in my letter", Dr Sheth did not really do anything until steps were taken to recover the amount due under the Assessments as a debt.

61. No good reason is put forward as to why Dr Sheth did not do anything between mid 2015 and filing an appeal in February 2018.

62. Even if I read this most favourably, taking HMRC's comment in early October 2015 that it would 'look into' his concerns, there is still no good reason for delay until February 2018. This aspect tells against him.

**EVALUATION OF ALL THE CIRCUMSTANCES**

63. I have formed a clear view on the merits, and this is that Dr Sheth's appeal does not enjoy any realistic prospect of success, even if it were permitted to proceed to a full hearing.

64. Judge Mosedale, correctly, has already explained why Dr Sheth's health and financial circumstances do not constitute a justiciable ground of appeal against the Assessments. I agree; but I say something more about these at the end of this decision.

65. I am satisfied that Dr Sheth has sufficiently raised the point of timing, but that then leaves the issue of whether the Discovery Assessments were validly and lawfully issued when they were.

66. HMRC bears the burden as to establishing that the statutory conditions in section 29 of the Taxes Management Act 1970 are met. Section 29(1) authorises an officer of the Board discovering (a) that any come which ought to have been assessed to income tax has not been assessed, or (b) that an assessment to tax is or has become insufficient to make an assessment. Section 29(4) or 29(5) has to be satisfied. Section 29(4) is that the situation in section 29(1) was brought about carelessly or deliberately by the taxpayer. Section 29(5) is that, at the end of the inquiry window, the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in section 29(1). This is a section 29(5) case.

67. If the section 29(5) conditions for a discovery assessment are met, then the Assessments in this case would each be in time, as each being issued within four years of the end of the year of assessment: see section 34(1) of the Taxes Management Act 1970. 4 years from 5 April 2010 (the earlier year) was 5 April 2014. The Assessments were issued in February 2014 (regardless of their receipt at the time by Dr Sheth).

68. I therefore have to give some consideration as to ask the evidence which, at the end of the inquiry window for each year, what information was available to the officer, and whether that was sufficient to have raised an assessment in the inquiry window.

69. On 4 June 2009 (letter misdated 2008), a Mr Mihailovits, a director of Sanzar Solutions, as the Scheme promoter, notified HMRC of a tax avoidance scheme and enclosed a form AAG1 dated 5 June 2009. The summary of proposal was "members of the scheme become employees of an Isle of Man Partnership and are granted a life interest in a UK resident discretionary trust. They elect to sell their life interest. The monies arising from the sale are not subject to CGT, NIC, or IT." The scheme was described in more detail on page 2 of the AAG1. It was given an Scheme Reference Number on 22 April 2010.

70. On 19 September 2010, HMRC was notified of Dr Sheth's participation in an avoidance scheme.

71. On 30 October 2010, Dr Sheth's self-assessment return and attachments for the year ended 5 April 2010 (including a form P11D) was filed, giving his employer as Sanzar Solutions. The Scheme Reference Number and tax year of expected advantage (2009-10) were given on his self-assessment return. Dr Sheth did not declare the cash equivalent of the loan.

72. On 6 February 2012, the same was done for 2010-11, but with two forms P11D: one relating to Sanzar Solutions, and one relating to DarwinPay. Dr Sheth did not declare the cash equivalent of the loan.

73. There was no white space disclosure.

74. Salazar and DarwinPay were 'contractor loan tax avoidance schemes'. Part of the mechanism was that Dr Sheth would have been paid, through the scheme, a modest salary, with the balance of the income attributable to his services being paid to him by an offshore employer in the guise of an employment related loan, which was paid on terms that it was never likely to have bene repaired. Scheme users did not self-assess the loan as taxable income; and Dr Sheth did not either.

75. The provision of a Scheme Reference Number does not connote approval of the arrangements by HMRC.

76. In his witness statement, Officer Forbes says, and I agree, that although the tax returns, attachments, and Forms P11D do identify that Dr Sheth used the Salazar and DarwinPay schemes, the information provided did not directly identify any insufficiency of tax, even less allow an officer to know or quantify the insufficiency of tax. Nothing identifies the so-called loan amounts were income attributable to Dr Sheth; and nothing indicates that these arrangements would result in an insufficiency of tax.

77. Therefore, the discovery provisions calibrated on what was known to HMRC at the end of the year of assessment are engaged:

(1) On 5 April 2010 (for 2009/10) it did not know enough to assess to Dr Sheth;

(2) On 5 April 2011 (for 2010/11) it did not know enough to assess Dr Sheth.

78. The evidence (Paragraphs 21(e) and (f) of Mr Forbes' witness statement) is that named officers of HMRC looked at Dr Sheth's tax returns:

(1) For the year ended 5 April 2010 on 6 August 2013, and became aware of the loss of tax on that return;

(2) For the year ended 5 April 2011 on 2 January 2014, and became aware of the loss of tax on that return.

79. Neither of those officers were of a sufficient grade to issue assessments. That was done by another officer on 10 February 2014. I do not consider that anything stood in the way, on 10 February 2014, of HMRC issuing assessments in relation to discoveries on 6 August 2013 and 2 January 2014. Discoveries were made, and the Assessments were in time.

80. Dr Sheth thereafter bears the burden of demonstrating that he was overcharged by the Assessments (section 50(6) of the Taxes Management Act 1970) and he has not put forward any justiciable reason why no tax is, as a matter of law, due, or the Assessments are wrong in amount (i.e., overstated).

81. Dr Sheth has invited me to consider the Government's response to the recommendations of the Morse Review. That does not assist him for two reasons:

(1) He had not fully disclosed his use of a Disguised Remuneration scheme because he had failed to make appropriate entries on his self-assessed tax returns (namely, he had not shown the cash equivalent of the loan on his self-assessed returns) and

(2) While loans made before 9 December 2010 are removed from the scope of the Loan Charge, the underlying tax liability for loans made prior to this date remains. This appeal concerns the underlying tax liability.

82. Even without conducting a mini-trial, and going on the basis of the information before me, there is simply no force in any argument as to timing of the Assessments. There is no realistic prospect of any appeal on that point succeeding.

83. I must also consider prejudice to the parties in giving or refusing permission. In this case, these balance each other out. The prejudice to Dr Sheth in refusing permission is that he is liable to pay the Assessments, and cannot now challenge them. But this prejudice is significantly mitigated by the fact that, even if he were to have sought to challenge the merits of the Assessments (which he did not squarely do), he would not, in my view, ultimately have succeeded. The prejudice to HMRC were I to have given permission would have been that Assessments issued in 2014 would still be up in the air and not finalised: but that is significantly mitigated by the fact that HMRC knew that Dr Sheth wanted to appeal as long ago as August 2015.

84. A further feature to be considered is that, on 18 November 2019, Officer Forbes wrote to Dr Sheth and explained that he had decided to exercise his discretion under section 687(7A)(b) of the Income Tax (Pensions and Earnings) Act 2003 to disapply the PAYE Regulations (meaning that Dr Sheth cannot claim entitlement to PAYE deductible from his earnings, and will therefore remain liable to pay the tax due). That decision has not been put in issue in this application; but it seems to me in any event that Officer Forbes' discretion in this case is not realistically capable of challenge.

85. Therefore, in terms of my evaluation of all the circumstances, and keeping in mind my findings as to delay and the reasons for delay, I do not give Dr Sheth permission to notify a late appeal: section 49(2)(b) of the Taxes Management Act 1970.

86. In its Statement of Case, settled by Counsel and dated 26 November 2019, HMRC has advanced an alternative analysis as to why the tax due under the Assessments is right, namely that a charge to employment income arises under section 62 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the amounts of Dr Sheth's redirected earnings - i.e. the amounts corresponding to the amounts Dr Sheth received as 'loans' transferred by the employers to him, whether directly or indirectly. However, given the narrow scope of this application, as it has come before me, it is not necessary to consider or make any findings in relation to that alternative analysis, and whether it is right or wrong. Nothing in this decision should be taken by HMRC as any endorsement of its analysis.

**CARE AND MANAGEMENT**

87. As I have already recorded, the immediate catalyst for the filing of a Notice of Appeal in February 2018 were the attempts of the Office of the Tax Recovery Officer in Rajkot, India, to recover the amount due under the Assessments as a debt owed to HMRC by issue of a Notice of Demand under the (Indian) Income Tax Act 1961. This will be done pursuant to mutual aid/recovery provisions between the United Kingdom and the Republic of India. I have no jurisdiction in relation to any debt recovery action in India.

88. If Dr Sheth were still in the United Kingdom, and if HMRC were itself seeking to recover the tax due as a debt in this jurisdiction, then this is a case in which, given Dr Sheth's personal circumstances, I would encourage HMRC to consider using its so-called Care and Management Powers. However, even in the UK, I would not have power to direct HMRC to use those powers if it did not want to, and I must be completely clear that I do not know whether those powers could even now be exercised by HMRC given the certification of the tax debt to the Indian authorities.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

89. 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.

**DR CHRISTOPHER MCNALL**
**TRIBUNAL JUDGE**

**RELEASE DATE: 08 MARCH 2021**