



Neutral Citation: [2024] UKFTT 001073 (TC)

Case Number: TC09364

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2024/02508

Application to make late appeal.

Heard on: 25 November 2024

Judgment date: 28 November 2024

Before

TRIBUNAL JUDGE HOWARD WATKINSON

Between

AIDEN TRADING LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr. Anthony Lloyd Beckford, Director of the Appellant

For the Respondents: Miss Natalie Owen, of HMRC Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video. The documents to which I was referred were in a bundle of documents running to 263 pps..
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
3. This is an application to make a late appeal against the decision notified to the Appellant on 24.7.23 to reduce all boxes on its 08/22 VAT period return to nil. I gave a decision orally refusing the application at the hearing and now set out in writing my reasons for doing so.

PRELIMINARY APPLICATION

4. The Respondents applied to amend their Notice of Objection to the application to make reference to the decision in *Easy Work Ltd & Ors. v HMRC* [TC/2019/04832 and others] (“the *Easy Work* decision”) handed down on 29.10.24. The Respondents wished to rely on the factual findings therein to the effect that the director of the Appellant, Mr. Beckford, was linked to 16 entities in those proceedings, which the Tribunal had found were part of an overall scheme to defraud the revenue of which Mr. Beckford was its architect and administrator. The Appellant objected that the *Easy Work* decision was irrelevant.
5. In my judgment the findings of fact in the *Easy Work* decision are not relevant to this application. As Miss Owen accepted, there is no pleaded case of fraud against the Appellant in this case, and I am certainly not bound by the factual findings of another Tribunal on different evidence. I have put the findings in the *Easy Way* decision firmly out of my mind, and they have played no part in my decision. Separately, the existence and chronology of the *Easy Way* decision I have kept in in mind, because the Appellant relies on them now to explain the delay in making this appeal.

FINDINGS OF FACT

6. The Appellant’s director is an accountant. He did the accounts for numerous businesses and was well aware at the time of the decision in this case being issued of the 30-day time limit to appeal to this Tribunal.
7. On 24.7.23 HMRC notified the Appellant of a decision to reduce each box on its 08/22 period VAT return to nil on the basis that the evidence that had been provided was “non satisfactory”. On 31.7.23 the Appellant requested a statutory review of that decision. On 25.10.23 the outcome of the statutory review was sent to the Appellant, upholding the decision. The letter recorded that the evidence to support the VAT return consisted of:
 - (1) a purchase and sales ledger detailing the amounts that go to make the VAT return figures;
 - (2) bank statements of ‘Mr Beckford, Aiden Trading Ltd’ covering most of the VAT Return period
 - (3) 80+ sales invoices; and
 - (4) a number of ‘set-off’ agreements.
8. The review letter noted that no copy purchase invoices had been supplied to the case officer.

9. The *Easy Work* decision concerned transactions in the period of 2017 – 2020. The *Easy Work* appeal was due to be heard in December 2022 but was adjourned and ultimately heard in November 2023 with judgment handed down on 29.10.24.

10. The Notice of Appeal in these proceedings was filed on 16.4.24. The reason for the late appeal was said in the document to be “The main argument for the appeal relates to discussion points, which have a secondary impact on the outcome of this appeal.”

11. Mr. Beckford explained to me initially that the Appellant was awaiting the outcome of the *Easy Work* proceedings before filing an appeal because if the *Easy Work* decision was a success for those Appellants that would mean that these proceedings would fall away. I find that the Appellant was not awaiting the outcome of the *Easy Work* proceedings. Firstly, the *Easy Work* proceedings did not concern any VAT periods relevant to these proceedings. Secondly, the Appellant did not wait until the outcome of the *Easy Way* proceedings to file its appeal, it did so some 6 months before the decision was handed down.

12. Mr. Beckford then told me that in fact he had anticipated the Tribunal’s decision in the *Easy Way* proceedings being handed down within 2-3 weeks of the conclusion of the hearing, which would have been by the end of December 2023 and that he was conscious of the appeal time limits because he had to do 7 other appeals. I find that this does not explain why the Appellant’s appeal was filed in April 2024, because if that was right the Appellant would have been in a position to file its Notice of Appeal by the end of December 2023, but it did not.

13. Mr. Beckford then told me that he spoke to someone at the Tribunal who said that the decision in the *Easy Way* proceedings would take more time, he then did not see any decision, and so filed the appeal in these proceedings. I find that this does not explain the Appellant’s appeal being submitted in April 2024 either. Had the Appellant expected a decision by December 2023, and then been told that it would take longer, I do not accept that the Appellant, conscious as it was of the appeal time limit, would have allowed until April 2024 to make an appeal.

14. Mr. Beckford then said to me that the Appellant wanted the *Easy Way* hearing (as opposed to judgment) completed before making this appeal. I find that this does not explain the lateness of this appeal either, since the hearing was completed in November 2023.

15. In short, I find that the Appellant has provided no cogent or credible reason for the lateness of the appeal. It seemed to me that each time I pressed Mr. Beckford on a contradictory or unclear aspect of his explanation for the appeal being made late, he would simply change tack and provide another one.

16. As to the merits of the underlying case, Mr. Beckford sought to persuade me that the Appellant had an extremely strong case because HMRC had confused deregistered VAT numbers with others, had not added up the bank statement entries to the invoice amounts, and had failed to apply set off as a form of consideration. I am unwilling to accept that submission. There was nothing in the documents before me to demonstrate such a strong case and I was not willing to accept Mr. Beckford’s analysis of the same based only on his submissions to me. Likewise, Miss Owen pressed on me the strength of HMRC’s case on the underlying appeal, but, again, there is nothing in the documents before me to demonstrate that HMRC has a particularly strong case, and I am unwilling to simply accept a submission to that effect. I find as a fact that neither party has an obviously stronger case than the other. In any event, this application is not the occasion on which to conduct a detailed examination of the underlying merits.

THE RELEVANT LAW

17. The basic approach to applications for permission to make late appeals is well established. In *William Martland v HMRC* [2018] UKUT 178 (TCC) (“*Martland*”), at [44]-[46], the Upper Tribunal said that:

- (1) In considering applications for permission to appeal out of time, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be;
- (2) The FTT can usefully follow the three-stage process in *Denton*;
- (3) At the third stage, the balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. The FTT’s role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist; and
- (4) In doing so, the FTT can have regard to any obvious strength or weakness of the applicant’s case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal.

18. In *Denton v TH White Ltd (and related appeals)* [2014] EWCA Civ 906 the Court of Appeal had set out a three-stage test for relief from sanction applications at [25] – [31]:

- (1) The first stage is to identify and assess the seriousness or significance of the failure to comply with any rule, practice direction or order. If the breach is not serious or significant then relief from sanctions will usually be granted and it will usually be unnecessary to spend much time on the second or third stages. If, however, the Tribunal decides that the breach is serious or significant, then the second and third stages assume greater importance;
- (2) At the second stage the Tribunal should consider why the failure or default occurred;
- (3) At the third stage the Tribunal should consider "all the circumstances of the case, so as to enable it to deal justly with the application".

DISCUSSION

19. At the first stage I find that the delay of more than 4 months in filing the Notice of Appeal in the context of a 30-day statutory time limit is both serious, and significant.

20. At the second stage I find that there is no cogent or credible explanation for the delay. The Appellant’s director is an accountant who said that he handed multiple appeals to the Tribunal and was very conscious of the time limits, yet no appeal was filed.

21. At the third stage, in the balancing exercise, I take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. I view neither party’s case as obviously stronger than the other. Standing back and looking at all the circumstances I conclude that the application to permit the late appeal should be refused.

DECISION

22. The application to make a late appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

23. 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.

**HOWARD WATKINSON
TRIBUNAL JUDGE**

Release date: 28th November 2024