JUDICIAL REVIEW – the concession of "equitable liability" known as the Noble practice – standing to bring judicial review proceedings - no

Case No JR/0102010
On transfer from the Administrative Court of
the Queen's Bench Division of the High Court
under reference CO/109/2010

In the matter of an application for Judicial Review

UPPER TRIBUNAL
FINANCE AND TAX CHAMBER

THE QUEEN

(on the application of BALJINDER SINGH (a bankrupt)

Applicant

- and –

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondent

- and –

STANLEY ROSE
(trustee in bankruptcy of BALJINDER SINGH (a bankrupt))
Interested Party

Tribunal: The President, the Hon Mr Justice Warren,

Sitting in public in London on 12 May 2010

David Southern counsel instructed by Rubric Lois King for the Appellant

Mark Watson-Gandy counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondent

Alaric Watson counsel instructed by Clifford Ingram for the Interested Party

DECISION

Introduction

1. This is the renewed oral application by the Applicant ("Mr Singh") for permission to bring judicial review against a decision of the Respondent ("HMRC") to submit a proof of debt in Mr Singh's bankruptcy. The decision is contained in a latter dated 6 October 2009 ("the Decision" and "the Decision Letter").

2. Mr Singh was adjudicated bankrupt on 14 November 2006 on the petition of HMRC based on unpaid PAYE and NIC for the years 1998/1999 to 2003/2004 "the earlier years"). This was Mr Singh's second bankruptcy.

3. On 15 February 2007, the Interested Party ("Mr Rose") was appointed as his trustee in bankruptcy in respect of both the first and second bankruptcies.

4. Mr Singh remains an undischarged bankrupt notwithstanding that the bankruptcy order was made over 3½ years ago. This appears to be the result of his conduct *vis a vis* Mr Rose whose solicitors write that "as a result of [Mr Singh's] lack of co-operation the Trustee has had the gravest difficulty in establishing the full extent of the debts and assets in the bankruptcy and the Court has suspended Mr Singh's automatic discharge from the second bankruptcy". Nothing, however, turns on Mr Singh's conduct or the reason that he has not been discharged.

5. On 2 June 2008, Mr Singh lodged an earlier judicial review application on the basis that HMRC had not applied the principle of "equitable liability" (also known as the *Noble* practice).

6. That application was settled by consent. HMRC agreed to review Mr Singh's tax liability applying the principles of "equitable liability". The agreement was reflected in an order quashing HMRC's decision in March 2008 not to reconsider the assessments for the earlier years in the light of the official practice of equitable liability. Paragraph 3 of the order provided as follows:

   > "[HMRC] shall consider in accordance with its published practice whether such evidence as has been produced on [Mr Singh's] behalf, and the inferences drawn from it, affords reasonable grounds for concluding that the assessments of [Mr Sing's] liability to tax are excessive, and, if so, to what extent.

7. That review was carried out by an Employer Compliance Manager, Lynda Jones, within HMRC, on the basis of evidence provided by Mr Singh and by his accountant, Mr Neil Smith of Messrs Folkes Worton, Chartered Accountants.

8. It is part of the *Noble* practice that the taxpayer must bring his tax affairs up to date. Accordingly, in reviewing the years of assessment which I have mentioned, Ms Jones reviewed the years 2004/2005 to 2006/2007 ("the later years"). In determining Mr Singh's liability for those years, she applied the same methodology in estimating Mr Singh's PAYE and NIC liability as she did for the earlier years. She also reviewed Mr Singh's personal tax liability under self-assessment for the period 1998/1999 to 2007/2008 and his liability for VAT for the period 11/1999 to 11/2006. This review resulted in a total tax liability of £524,739. Mr Singh was told of this result in a letter to his solicitors dated 22 May 2009.

9. Following receipt of further information, this total was revised downwards to £478,211. HMRC wrote to Folkes Worton providing this figure on 6 October

2009 – this is the Decision Letter. The bases of the calculations were set out in the letter. It was stated that "….HMRC will now notify [Mr Rose] of our revised final claim when we will submit a revised proof in Mr Singh's bankruptcy in the sum of £478,211.11".

10. HMRC then submitted a proof for that amount which Mr Rose has admitted.

The Application for permission to bring judicial review

11. Mr Singh contends that, in relation to PAYE and NIC, the revised amounts for the earlier years and the amounts determined for the later years are excessive. These are £173,132 plus interest of £43,075 for the earlier years and £77,536 plus interest of £11,072 for the later years. He says that, in relation to the earlier years, HMRC have not properly applied the *Noble* practice and that their purported application of it was unreasonable in the sense that no officer of HMRC acting reasonably could properly have adopted certain of the elements of the methodology resulting in the reviewed amounts. Since the same methodology has been applied to the later years, it is also said that the amounts determined for the later years are excessive and not ones which could reasonably have been reached.

12. So far as concerns the self-assessment amounts, Mr Singh did eventually, but very late, submit returns which form the basis of the amounts claimed (totalling £46,099) and which are not in dispute. Similarly, the amount of VAT claimed (£127,295) is not disputed. These amounts are included in the £478,211 accepted by Mr Rose.

13. It should be noted that there has been no Determination under the PAYE Regulations and no other assessment in relation to the later years so far as concerns PAYE and NIC. The proof of debt submitted to Mr Rose is based, so far as concerns PAYE and NIC for the later years, on the figure arrived at by HMRC in its review of Mr Singh's liabilities. It has not become binding on any person as the result of any tax legislation nor has it been subject to any sort of judicial confirmation.

14. In these circumstances, Mr Singh wishes to bring judicial review seeking to quash the Decision. Mr Rose does not wish to adopt Mr Singh's application or to allow him to proceed with it in his name. Both HMRC (represented by Mr Watson-Gandy) and Mr Rose (represented by Mr Alaric Watson) contend that Mr Singh has no standing to bring such an application. In contrast, Mr Singh (represented by Mr David Southern) contends that he would clearly have standing to bring such an application if her were not a bankrupt and that the fact of his bankruptcy makes no difference to that.

Standing to bring the claim

15. In order to resolve that issue, I need to say something about the right of a bankrupt to bring or defend or otherwise take forward proceedings.

16. I start with the decision of the Court of Appeal in the combined appeals in *Heath v Tang* and *Stevens v Peacock* [1993] 1 WLR 1421. In each case, the applicants applied to the Court of Appeal for leave to appeal against the judgment for a liquidated sum (these were not tax cases) on which the bankruptcy petition had been based. In the first case, the trustee in bankruptcy indicated his unwillingness to pursue an appeal; in the second, no trustee had been appointed. It was held that neither applicant had *locus standi* to institute an appeal.

17. As Hoffmann LJ, giving the judgment of the Court, noted at the outset of his judgment, the bankrupt's estate vests in his trustee when appointed under section 306 Insolvency Act 1986. And, under section 285(3) no creditor has after the making of a bankruptcy order any remedy against the property or person of the bankrupt in respect of debts provable in the bankruptcy. The effect, as he put it is

> "that the bankrupt ceases to have an interest in the either his assets or his liabilities except in so far as there may be a surplus to be returned to him upon his discharge."

18. He went on to consider the position of a bankrupt who is a plaintiff and then of one who is a defendant. Although in the present case, we are principally concerned with Mr Singh's liabilities rather than his assets, it is helpful to consider what Hoffmann LJ had to say about the assets of a person which include "things in action". Although all the property of a bankrupt vests in the trustee, there are certain personal causes of action which do not vest. Hoffmann LJ gave some examples. But apart from those types of case, all cause of action vested in the bankrupt at the date of the bankruptcy vest in the trustee when appointed. A subsisting action does not abate upon bankruptcy but will be stayed or dismissed unless the trustee is willing to be substituted as plaintiff.

19. The rule that a bankrupt could not sue on a cause of action vested in his trustee was strictly enforced. As Hoffmann LJ explained:

> "The rule that the bankrupt could not sue on a cause of action vested in his trustee was enforced with such rigour that he could not even bring proceedings claiming that the intended defendant and the trustee were colluding to stifle a claim due to the estate and which, if recovered, would produce a surplus."

20. But that rigour was softened to some extent by the jurisdiction of the judge in bankruptcy to direct the trustee to bring an action. This is the jurisdiction now found in section 303. The supervisory jurisdiction, as Hoffmann LJ put it

> "protects the bankrupt from injustice which might otherwise be caused by his inability to bring proceedings outside the bankruptcy jurisdiction".

21. Where the bankrupt is a defendant there will usually be no question of a cause of action having vested in the trustee. Where there is a claim for debt or damages, the only assets out of which the creditor can obtain payment will have vested in the trustee. Hoffmann LJ concluded from this:

> "It will therefore be equally true to say that the bankrupt has no interest in the proceedings. As we have seen, section 285(3) deprives the plaintiff of any remedy against the bankrupt's person or property and confines him to his right to prove".

22. But as with the case of a plaintiff bankrupt, there are cases where personal relief, such as an injunction, is sought against a bankrupt; where such claims can be made, the bankrupt is entitled to defend himself and, if the judgment is adverse, to appeal. Hoffmann LJ was clearly of the view that the bankrupt would have been unable to appeal against an order which was enforceable only against his estate. Again, a defendant bankrupt will be protected by recourse to section 306. The authorities establish that in principle a bankrupt cannot in his own name appeal from a judgment against him which is enforceable only against the estate vested in the trustee.

23. It was suggested that the position was different in the case of a judgment upon which the bankruptcy petition was founded. It was suggested that the position was different because the bankrupt does have an interest because if he can get rid of the judgment, he may be able to have the bankruptcy order annulled. Hoffmann LJ rejected this argument saying that there was "nothing sufficiently special about the petitioner's judgment to take it out of the general principle".

24. It is worth quoting the following passage which demonstrates the continuing utility of the principle:

> "The insolvency law has of course changed a great deal since the time of Lord Eldon and *In re Smith (A Bankrupt), Ex parte Braintree District Council* [1990] 2 A.C. 215 is authority for taking a fresh look at the construction of the Insolvency Act 1986 in modern conditions. Nevertheless, the principle that the bankrupt is divested of an interest in his property and liability for his debts remains fundamental in the new code. The consequences for the bankrupt's right to litigate do not seem to us inconvenient or productive of injustice. The bankruptcy court acts as a screen which both prevents the bankrupt's substance from being wasted in hopeless appeals and protects creditors from vexatious challenges to their claims."

25. Although it was not, so far as I can see, expressly stated in *Heath v Tang* that the right to appeal vested in the trustee, authority demonstrates that that is the position. Thus in *Wordsworth v Dixon* [1997] BPIR 337, Sir Thomas Bingham MR, giving the judgment of the court, said this, referring to *Heath v Tang*:

> "…that clearly establishes that on the vesting of a bankrupt's estate in the trustee, the right to challenge a judgment which would take effect against the estate vests in the trustee. That means that the right to seek leave to appeal against the order of Turner J vests in [the trustee]…."

26. That case was one where the bankrupt had been a defendant in the original action brought by the plaintiff and thus fell within the second class of case discussed by Hoffmann LJ in *Heath v Tang*. Hoffmann LJ was also a member of the court of appeal which decided *Wordsworth v Dixon*: there can be no doubt, therefore, that he was of the view that the right to appeal vested in the trustee even if he did not expressly say as much in *Heath v Tang*..

27. *Heath v Tang* and *Wordsworth v Dixon* were not tax cases. But *Soul v CIR*; *and Soul v Caillebotte (HMIT)* 43 TC 662 were. In those cases, the appellant had lost his appeals from the Special Commissioners in the High Court and wished to appeal to the Court of Appeal. After serving his notice of appeal, he was adjudicated bankrupt. His trustee was not willing to be a party to the appeals or to prosecute them. The appeals were dismissed on the basis that the bankrupt had no interest left in the matter at all and that the only person entitled to prosecute them was the trustee.

28. The position is, in my judgment, the same where a taxpayer has a statutory right of appeal to the Tax Chamber in respect of assessment raised prior to bankruptcy and is subsequently adjudicated bankrupt before he issues his appeal or, after having issued it, before it is heard. This was the conclusion reached by Dr Nuala Brice sitting as a Special Commissioner in *Ahajot (Count Artstunik) v Waller (HMIT)* [2004] STC 151. I agree with her decision.

29. The position in relation to unassessed tax needs to be separately considered. In the present case, there has, as I have said, been no Determination or assessment in relation to PAYE and NIC for the later years. It is to be noted that HMRC seek to prove only for tax liabilities in relation to periods prior to the bankruptcy. Those liabilities, although unassessed, were nonetheless, at the time of the bankruptcy, contingent debts in relation to which HMRC were, *prima facie*, entitled to submit a proof of debt. If that were not so, it would seem that HMRC would not have any right to prove for tax in respect of a pre-bankruptcy period which had not already been assessed. Even if, post-bankruptcy, an assessment were made and its amount confirmed following an appeal to the Tax Chamber, the non-provable debt would not, simply by virtue of its quantification, be turned into a provable debt.

30. In my judgment, just as with any other contingent debt, it is open to the trustee to accept the proof of debt for unassessed tax. It is not a requirement of the bankruptcy legislation that the trustee should insist on a Determination or assessment before accepting a proof of debt; still less is he required to appeal a Determination or assessment even if one is made. There would be no point in requiring a trustee to insist on an assessment if he would then simply accept a proof of debt for the amount assessed.

31. The remedy of the bankrupt in such a case, if he considers that the proof should not have been admitted, is to make an application to the bankruptcy court under section 303. If the court is satisfied that the trustee ought not to have admitted the proof of debt, it can reverse the position and direct the trustee to appeal any Determination or assessment which HMRC might subsequently make or raise.

32. Mr Southern submits that this is all wrong. He says that it is not permissible for the trustee to by-pass the assessment and appeal process in this way. I disagree. The assessment and appeal process is not being by-passed. Rather, the trustee is entitled and bound to apply the bankruptcy rules to a situation which is not expressly dealt with by the tax legislation. There is no reason to treat a tax debt any differently from any other debt. It is certainly not the case that the bankrupt can himself insist on a Determination or assessment and then appeal it in the face of opposition from the trustee. To allow that would be to circumvent the statutory regime, depriving the bankruptcy court of its statutory control of matters arising in the bankruptcy (see in particular section 363) and involving the creditors and trustee in unnecessary expense and uncertainty.

33. I ought to refer to the decision of HH Judge Purle QC in *Arnold v Williams* [2008] BPIR 247. That was a case where the bankrupt had been discharged from his bankruptcy. HMRC had raised assessment during the bankruptcy in respect of pre-bankruptcy tax in respect of which they submitted a proof of debt. The assessments (in the name of the bankrupt) were not served on the bankrupt but only on the trustee. The bankrupt later sought to appeal the assessments, but HMRC declined to entertain the appeal on the basis that the right of appeal was the sole responsibility of the trustee. The trustee admitted the proof in full. The bankrupt, in accordance with the appropriate bankruptcy procedure, then made an application to the bankruptcy court to reverse that decision. A further assessment was made in respect of pre-bankruptcy taxi, this time in the name of the trustee.

34. The judge distinguished the reasoning in *Heath v Tang* which, according to him, could have no application in the case before him where the assessments post-dated the bankruptcy. The right to appeal the assessment did not therefore vest in the

trustee and there was no statutory basis for allowing him to appeal just because the bankruptcy estate is interested.

35. I have considerable difficulty with that analysis. The reasoning of *Heath v Tang* is not that the right to appeal vests in the trustee (although it does so where the assessment pre-dates the bankruptcy). Rather, the bankrupt has no standing to proceed with the appeal because he has no interest in the estate which has vested in the trustee and which comprises the only assets out of which the tax could be paid. If the bankrupt has no standing then the trustee must have standing otherwise the unacceptable result would be reached under which no-one had a right of appeal at all. The answer may be that an appeal has to be brought in the name of the bankrupt, but if that is so, the decision whether to do so is that of the trustee and not of the bankrupt and the bankrupt is under a duty to co-operate accordingly under section 333. Further, if Judge Purle's analysis is right, it is not clear why the trustee is entitled to conduct the appeal even in a case where the assessment pre-dates the bankruptcy. There is no express statutory basis in that case any more than there is where the assessment post-dates the bankruptcy – at least, none has been drawn to my attention.

36. I do not need to decide whether the judge was right in drawing the distinction which he did between assessments made before and after the bankruptcy, As he himself said at paragraph 66 of his judgment:

> "The machinery of proof in bankruptcy undoubtedly provides for allowing tax debts to be proved even though they are un-assessed; see generally s.322 of the IA……."

37. In the present case, there has been no assessment. Moreover, Mr Singh has not been discharged from his bankruptcy. Accordingly, *Arnold v Williams* is readily distinguishable and should in my judgment be distinguished so far as concerns the later years. This result is consistent with the approach of Harman J in Re *a Debtor, ex p the Debtor v Dodwell* [1949] Ch 236 where it was held that it was for the trustee alone to settle with the Crown in a case where the bankrupt had been discharged and there was no assessment.

38. Mr Southern submits that the position in the present case is entirely different on the footing that Mr Singh has a personal right which is not subject to the *Heath v Tang* disqualification. There are two limbs to this submission:

    a. The first limb is that a right to seek judicial review of the Decisions is a personal right which did not vest in Mr Rose and which Mr Singh himself is entitled to assert.

    b. The second limb is that there is a potential surplus in the estate so that Mr Singh has a personal right in relation to claims by third parties on the estate.

    I take those two limbs in turn.

39. It may be that Mr Southern is correct in saying that the right to seek judicial review did not, when it arose, vest in Mr Rose. Until HMRC made the Decision, there was plainly no right at all. Accordingly, if the right is properly to be regarded as property at all, it did not come into being until October 2009. It can only vest in the trustee as after-acquired property under section 307. Vesting only occurs following a notice, but no notice has been given.

40. But even if that is correct, it does not follow that Mr Singh can himself bring judicial review proceedings. Whether he can do so depends, in my view, on whether the right is a personal right in the sense discussed in *Heath v Tang*. If it is such a right, then it not only remains vested in Mr Singh but he, and he alone, has the right to assert it. In contrast, if it is not a personal right, he cannot assert it because he has no interest in the outcome of his challenge any more than he would have in the result of a tax appeal if a Determination or assessment had been made. This is because, even if the challenge were successful, the result would at best at the end of the day only be that his estate would be increased because the tax liability would be reduced. The reasoning in *Heath v Tang* applies here.

41. The question then is whether there is something in the nature of judicial review which means that it is to be categorised as personal in the sense discussed in *Heath v Tang*. Mt Southern describes the right to seek judicial review as an important constitutional principle: its purpose is to enable the courts to ensure that public bodies observe the substantive principles of public law in the interests of safeguarding the integrity of the rule of law. It follows, according to his argument, that the right to seek judicial review cannot be ousted or curtailed by insolvency law; the fact that Mr Singh is bankrupt is irrelevant to the question whether he has a sufficient interest to seek judicial review. In other words, a right to seek judicial review is a personal right in the sense discussed in *Heath v Tang*.

42. I do not agree. Whether a particular application seeking judicial review is personal in that sense depends on the nature of the review which is sought. Some types of judicial review may be personal: for instance, a review of the actions of the First-tier Tribunal exercising a mental health jurisdiction in relation to a matter where there is no appeal route available. But equally, some types of judicial review will not be personal: for instance, judicial review of a planning authority in relation to a planning application made by the bankrupt before his bankruptcy in respect of property which has since vested in his trustee as part of his estate where it must, I consider, be the trustee and not the bankrupt who would have the right to bring judicial review. Where the judicial review relates to the tax liability of the bankrupt, as in the present case, the ultimate object in bringing the application is to reduce the tax liability. Where the tax liability is a provable debt, as in the present case, the bankrupt has no more interest in the result of the judicial review than he would have in the result of an appeal were one available. The right to bring judicial review is not a personal claim in this type of case.

43. There is nothing, in my judgment, in Mr Southern's point based on high constitutional principle. The effect of the insolvency legislation is not to curtail the right to bring judicial review in any way. It simply has the result that, in cases where the bankrupt has no interest in the outcome, the right to apply rests with the trustee and not the bankrupt. Accordingly, Mr Singh has no standing to bring an application for judicial review.

44. It seems to me, in any event, that the application is misconceived. Mr Singh's complaint, if he has one at all, is not so much that HMRC have sought to prove for an amount of (unassessed) tax. Rather, it is that, according to him, they have still failed to apply the *Noble* practice properly in relation to the earlier years and that, in determining the amount of (unassessed) tax for the later years, they have failed to apply the correct criteria and have, instead, applied the same erroneous criteria as in relation to the earlier years. In relation to the earlier years, where the

assessment pre-dated the bankruptcy, and where the statutory right of appeal is out of time, it is clear, in my view, that it is for the trustee and not Mr Singh to decide whether to seek to appeal out of time or to seek judicial review in relation to the allegedly incorrect application of the *Noble* practice. Mr Singh's remedy, if he has one at all, is to apply to the bankruptcy court to quash the proof of debt insofar as it relates to the assessments in respect of those earlier years and to obtain a direction that Mr Rose bring judicial review or allow Mr Singh to do so. Unless and until judicial review is brought following such an application to the bankruptcy court, there can be no possible complaint by Mr Singh against HMRC that they have decided to submit a proof of debt based on an unappealed assessment.

45. In my judgment, the position is no different in relation to the proof of debt insofar as it relates to unassessed tax in relation to the later years. It was for Mr Rose alone to decide whether or not to admit to proof the unassessed tax for later years in the figure submitted by HMRC. There can be no possible complaint that HMRC submitted the proof which they did even if they had failed properly to apply correct criteria in arriving at the amount of tax which is said by HMRC to be due. This is because it would, on that footing, have been for Mr Rose to refuse to admit the proof. HMRC would then have had to make a Determination or assessment which Mr Rose would then have been able to appeal – there ought to be no need to invoke the *Noble* practice at all since by that time, Mr Singh should have been able to produce all of the information to enable the assessment to be made in the correct amount in the first place and thus sufficient to found an appeal by Mr Rose.

46. Accordingly, it is not, in my view, the decision by HMRC to submit the proof which it did which is open to challenge. Mr Singh's complaint, if he has one at all, is that Mr Rose accepted the amount submitted. That is a complaint which should be brought to the bankruptcy court under section 303.

47. Mr Southern also relies on *Re Hurren (a bankrupt)* [1983] 1 WLR 183. That case is usually cited for the proposition that penalties levied by the Revenue are provable debts. But Mr Southern relies on this case in support of a submission that where there is a potential surplus on a distribution, the bankrupt does have a personal interest in the outcome. That submission cannot stand in the light of *Heath v Tang* as is clear from the passage which I have quoted at paragraph 19 above.

48. *Re Hurren* was a case where there might have been a surplus after paying the debts due to the Inland Revenue (the major creditor). Mr Southern has referred to the passage in the judgment where Walton J indicated that the way forward was for the trustee to agree the tax liability with the Revenue but only with the consent of the bankrupt. As he said:

> "So in substance it is really a question between the bankrupt and the Revenue with the trustee holding a watching brief to see that neither of them makes any fatal errors..."

49. This cannot, with respect to Mr Southern, be read as a decision that, where there is or might be a surplus, the bankrupt has a personal interest so as to entitle him to bring or defend proceedings. The principles explained in *Heath v Tang* apply with the result that it is for the trustee to decide what to do. Indeed, *Re Hurren* itself

demonstrates the correct approach. The matter was brought before the bankruptcy court and, on the facts of that case, Walton J took the pragmatic approach which he did, enabling the dispute with the Inland Revenue to be settled by agreement between the trustee and the Revenue but with the consent of the trustee.

50. My conclusion, therefore, is that Mr Singh has no standing to bring judicial review against HMRC in respect of the Decision.

Alternative remedy

51. There is another reason why Mr Singh cannot succeed in an application for judicial review. Mr Singh has an alternative remedy as already discussed, namely the right to challenge the acceptance by Mr Rose of HMRC's proof of debt by way of application to the bankruptcy court under section 303 and Rule 6.105 Insolvency Rules 1986. The Tribunal will not entertain judicial review proceedings where such an alternative remedy subsists: see for instance *R (Sivasubramaniam) v Wandsworth County Court* [2003] 1 WLR 475 (at paragraphs 46 and 47).

The merits of a claim for judicial review

52. This makes it unnecessary to consider the merits of any claim for judicial review whether brought by Mr Rose or by Mr Singh. I do not therefore propose to go into the evidence given by Mr Singh and his accountant or the evidence given by Ms Lynda Jones on behalf of HMRC. I ought to say, however, that it is far from clear that Mr Singh's evidence is sufficient, in the light of Ms Jones' evidence, even to pass the threshold test for granting permission to bring judicial review.

Conclusion

53. Accordingly, Mr Singh's application to bring judicial review of HMRC's decision of 9 October 2009 to submit a proof of debt in the sum which it did is dismissed and permission is refused.

Costs

54. Mr Rose should be entitled to take his costs of resisting Mr Singh's application out of the trust estate; I direct accordingly. HMRC seek their costs out of that estate. However, in the Administrative court, it is only in exceptional cases that a respondent to a claim for judicial review is entitled to his costs of attending an oral hearing. I consider that the same approach should be adopted in the Tax and Chancery Chamber. HMRC are, however, ever entitled to the costs of preparing and filing their acknowledgment of service and attached summary grounds of appeal. I direct these costs to be paid out of the estate. The figure is to be agreed with Mr Rose and, in default of agreement, to be subject to detailed assessment on the standard basis.

The President, the Hon. Mr Justice Warren

Release date: