



Appeal number: UT/2021/000073 (P)

PROCEDURE – First-tier Tribunal refusing permission for late appeal – appeal not late – appeal allowed, and substantive proceedings remitted to First-tier Tribunal

**UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)**

DR PRADIP KUMAR SHETH

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE JONATHAN RICHARDS

Appeal determined on the papers following written observations from the Appellant, in person, and from Ronald Kelly on behalf of the Solicitor and General Counsel to HM Revenue & Customs representing the Respondents

DECISION

1. On 24 May 2021 I gave the appellant, Dr Sheth, permission to appeal against a decision (the “Decision”) of the First-tier Tribunal (Tax Chamber) (the “FTT”) released on 8 March 2021. In the Decision the FTT refused Dr Sheth permission to make a late appeal against various discovery assessments that HMRC had made for the tax years 2009-10 and 2010-11.
2. I granted permission to appeal on a single ground, namely that it was at least arguable that Dr Sheth’s appeal against the discovery assessments was made in-time, he did not therefore need permission to bring a late appeal and accordingly the FTT made a mistake of law in refusing Dr Sheth a permission that he did not need.
3. The FTT had an unenviable task: the case was decided on the papers without a hearing and Dr Sheth’s tax affairs were in a state of some confusion. The FTT was asked to consider a documents bundle running to 720 pages. However, since I considered that Dr Sheth had a strong case for arguing that there was a mistake of law in the Decision, I invited HMRC to confirm whether they would contest the appeal on the single ground for which I had granted permission.
4. HMRC have confirmed that they will not seek to contest the appeal. Accordingly, I dispose of Dr Sheth’s appeal as follows:
 - (1) The Decision is set aside.
 - (2) The matter is remitted back to the FTT with a direction that they must consider Dr Sheth’s substantive appeal against HMRC’s discovery assessments for 2009-10 and 2010-11 on the basis that Dr Sheth has both made an appeal against those discovery assessments, and notified that appeal to the FTT, within applicable time limits.
 - (3) The remitted appeal must be heard by a differently constituted FTT.
5. Dr Sheth is representing himself in these proceedings. For his benefit, I would emphasise that my decision at [4] above does not mean that HMRC’s discovery assessments have been cancelled. All it means is that the matter is going back to the FTT. The FTT will now decide whether HMRC’s discovery assessments were correct.
6. Also, for Dr Sheth’s benefit, I would explain that HMRC have said that they still believe that he has a weak case. They have indicated that they are likely to ask the FTT to “strike out” his case (i.e. not to allow it to go ahead because it is so weak). It will be up to the FTT to decide what to do if HMRC do ask for Dr Sheth’s appeal to be “struck out”.
7. I do note, however, that the FTT judge making the Decision expressed some views on the strength of Dr Sheth’s appeal. There was nothing wrong with that as it was appropriate for the judge to think about the strength of the appeal when considering what he understood to be a request for permission to make a late appeal. However, now that the case is going back to the FTT, I have decided it is appropriate for it to be heard

by an FTT judge who had not yet formed even any preliminary views on the strength of Dr Sheth's case. That is why I have made the direction in paragraph [4(3)] above.

Signed on Original

JUDGE JONATHAN RICHARDS

RELEASE DATE: 07 July 2021