



UPPER TRIBUNAL

UT Neutral Citation number: [2025] UKUT 00334 (TCC)

TAX AND CHANCERY CHAMBER

Applicant: Mr Gul Khan	Tribunal Ref: UT-2025-000010
Respondents: The Commissioners for His Majesty's Revenue and Customs	

**RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL
FOLLOWING ORAL HEARING**

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant, Mr Gul Khan, applies to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) ("the FTT"), released on 9 July 2024 ("the Decision"). The Decision was made by the FTT following a hearing conducted on 3 July 2024.
2. HMRC had assessed the Applicant to income tax and penalties relying on rental income they say he received from a number of investment properties owned by him. HMRC had made the discovery assessments made under section 29 Taxes Management Act 1970 ("TMA") and issued the penalties under section 7 TMA for the tax years 2004-5 to 2008-9 and under Schedule 41 Finance Act 2008 for the remaining years. The total tax originally assessed by HMRC was £49,620.52 and the penalties totalled £33,887. The assessments were subsequently reduced by HMRC and the amount of tax subject to the appeal was £36,005.50 and the penalties were £24,450.40.
3. In its Decision the FTT dismissed the Applicant's appeal against income tax assessments made by HMRC but allowed it in part against penalties issued for failure to notify his tax liabilities for the tax years 2004/5 to 2012/13 inclusive. The FTT reduced the penalties from 70% to 62.5% of the Potential Lost Revenue as a result of the appeal.

4. References in square brackets [] are to paragraphs in the Decision.

5. At [73]-[75] the FTT concluded:

“73. We have found that HMRC made valid discovery assessments of unpaid income tax relating to the Appellant’s rental income for the tax years ending 5 April 2005 to 2013 inclusive, that the assessments were made to “best judgement” and that information eventually provided by the Appellant has been taken into account in the quantum of the assessments. The Appellant has failed to provide any further evidence to show he has been overcharged by the assessments and accordingly, we uphold the assessments to income tax.

74. We have found that the Appellant deliberately failed to notify HMRC of his liability to tax and that the penalties were appropriately calculated save that HMRC had calculated the penalties under schedule 41 on the basis that the Appellant’s disclosure was prompted, and we have found that it was unprompted.

75. We therefore dismiss the appeal except in relation to the penalty assessments under schedule 41 which shall be amended to reflect the fact that the Appellant’s disclosure was unprompted.”

6. By a decision dated 9 January 2025 (“the PTA Decision”), the FTT refused the Applicant permission to appeal the FTT’s Decision to the Upper Tribunal (“UT”) on five grounds of appeal pursued. The Applicant renewed his application to the UT for permission to appeal in-time within a month thereafter.

7. In a decision dated 19 May 2025 I refused the Applicant permission to appeal to the UT on the same five grounds of appeal pursued. The Applicant subsequently requested reconsideration of his application for permission to appeal at an oral hearing.

8. In July 2025 the UT sent the Applicant written notice of the hearing of his application which was listed to take place at 10.30am on 7 October 2025 by video, including the details of how to login and join the hearing. The Applicant acknowledged the notice of hearing on 17 July 2025. Thereafter, the Applicant did not respond to written reminders of the hearing and login details sent in emails by the UT on 6 October 2025, the day before the hearing, and at 10.36am on 7 October 2025, the morning of the hearing. He did not accept the electronic invitation sent to him on 6 October 2025 to join to the video hearing. Furthermore, the Applicant did not respond to two telephone calls made by the UT on the morning of the hearing (this morning) to the telephone number he had provided in his contacts details in his notice of appeal.

9. I logged into the hearing at around 10.30am this morning and waited until 10.50am before beginning the hearing. The Applicant did not attend the hearing or make any contact with the UT by telephone or email or otherwise. I was satisfied that the Applicant had been notified of the hearing and more than reasonable steps had been taken to give him proper notice of the hearing.

10. I was further satisfied that it was in the interests of justice, in accordance with the overriding objective of justice and fairness, to proceed with the hearing in the Applicant’s absence pursuant to Rule 38(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Applicant gave no reason for his non-attendance nor made any application for an adjournment

– in particular, he did not suggest he was too ill to attend. The Applicant had not demonstrated any recent engagement with the UT which gave the appearance that he deliberately did not attend nor participate because he did not wish to do so. There was no realistic prospect that an adjournment of the hearing, which the Applicant had not requested, would secure his attendance and in those circumstances it would only have caused unnecessary delay to adjourn. I am satisfied that the Applicant has had a reasonable and fair opportunity to put everything he would like to say or argue in writing to the UT and to attend a hearing in order to make oral submissions. I will consider all his written material and submissions afresh in reconsidering the permission decision having proceeded with the hearing in his absence.

11. The Respondents, not being required, did not attend the hearing nor make any submissions in advance.

UT's jurisdiction in relation to appeals from the FTT

12. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

13. It is therefore the practice of this Chamber of the Upper Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so.

Grounds of Appeal

14. The Applicant relies upon the same five grounds of appeal that he filed at the FTT, to submit that the FTT erred in law in making the Decision. He writes:

“GROUND 1: ERROR OF LAW

1. The Appellant had presented authentic evidence as to the on-going medical condition that prevented him from attending a trial: Long Covid. Greater significance should have been paid to the medical evidence and there was a compelling application for an adjournment that ought to have been granted in the circumstances.

GROUND 2: EXERCISE OF DISCRETION

2. Further or alternatively, the decision to refuse an adjournment, and / or to award a judgment in favour of the Respondent without hearing evidence, was plainly wrong and / or the Court should have determined the Appellant's account and decided upon his credibility. Overall, the exercise of the Judge's discretion was in its entirety disproportionate and / or perverse.

GROUND 3: LIMITED APPEAL

3. The Appellant believes that the hearing ought to not have gone ahead as the representative was not fully aware of the background and facts and therefore was limited as to the information resulting in the points not been presented fully and or in depth. Therefore, the only way forward should be that a fresh hearing should take place.

GROUND 4: MISSING DOCUMENTS

4. The Appellant believes that documents were missing and not included in the bundle which had been supplied to the Respondent which ought to be included in the bundle at the hearing.

GROUND 5: SUBMISSIONS MADE WERE NOT GIVEN WEIGHT

5. The Appellant believes that submissions made were not given adequate weight. Furthermore, the Tribunal Judge failed to acknowledge, give any thought or credence to the property being held in trust.”

Discussion, Analysis and Decision

15. I have reconsidered the application for permission afresh. Having done so, I once again refuse permission to appeal on each of the Applicant’s grounds of appeal as they hold no realistic prospects of success. They do not raise any arguably material errors of law in the FTT’s Decision.

16. I address the grounds of appeal in the order they appear in the submissions.

17. Ground 1. The application for an adjournment appears to have been based upon the late instruction of the Applicant’s representative (Mr Nadeem Khan of Eden Solicitors) rather than his medical condition – see the Decision at [10]. It does not appear that any fresh medical evidence was relied upon in support of the application that suggested the Applicant was medically unable to attend the hearing or present his appeal as of July 2024 (the medical evidence referred to appears to be that in relation to the adjournment application in November 2023). The Applicant has not presented any medical evidence to the UT in support of his application for permission in relation to the FTT hearing nor his absence from today’s hearing.

18. At [11]-[14], the FTT took into account the medical evidence filed by the Applicant on the previous occasion in November 2023. It does not appear that any up to date medical evidence was presented to the FTT that suggested that he was unfit to attend a hearing as of July 2024 and there was no request to change the form of the hearing to one conducted by telephone or video.

19. In any event, the FTT considered the medical evidence presented on behalf of the Applicant (whether previous or current) and noted that this was the fourth adjournment application – see [11] & [12]. The FTT took into account that it had granted the third adjournment application some seven months before (in November 2023) and had issued directions at that time for the Applicant to obtain representation because it was unclear when he would be well enough to pursue the appeal himself.

20. The FTT was entitled to take into account the following in refusing the adjournment: that the Applicant had received the benefit of three previous adjournment applications on the grounds of ill health; there had been no representations as to when the Applicant would be well enough to attend trial on any future occasion so it was uncertain when or if he would be able to conduct the case himself; that the adjournment application was made at the last minute (at 17.28 on 2 July 2024, the day before the hearing); the application did not appear to be based on any medical reason as it was said to be based on the late instruction of the representative;

and that the Applicant had only instructed representatives at the last moment (around five days before, on 28 June 2024) after it was said that the previous representative had withdrawn (see [10]). The FTT noted at [13] that the “Appellant had had seven months to obtain representation and appeared to have left it until the last minute to do so. We had no evidence about the agent appointed before Mr [Nadeem] Khan or the circumstances in which they had withdrawn”. The FTT took into account relevant factors, considering and weighing in the balance factors such as: the quality of the reason for the application; the interests of justice; potential prejudice and fairness to the Applicant; and delay, when exercising its discretion.

21. The decision to refuse the adjournment application was a case management decision, in respect of which the FTT was entitled to exercise a wide ambit of discretion. There was clearly a rational exercise of the discretion by the FTT and the UT would only interfere with the Decision if it were arguably wrong in law, such as if it were irrational. There was no arguable procedural unfairness in the FTT deciding to proceed with the hearing.

22. Ground 1 is dismissed – there is no arguable error of law in the FTT Decision.

23. Ground 2. The FTT was not required to hear oral evidence from the Applicant in circumstances where it refused to adjourn the hearing and he had received the opportunity to attend and give evidence. As above, the adjournment application was not put on the basis of him needing to be present to give evidence. Even if the Applicant suggests he was too ill to attend trial, no up to date medical evidence has been put before the FTT nor UT to support this at the time of the hearing. Once the adjournment application was refused, on the basis of it being just and fair to proceed, it was incumbent on the FTT to continue to conduct a fair hearing throughout. The FTT did so by considering the written evidence and submissions filed by the Applicant and his representative. The Applicant had been given a more than fair opportunity to present oral evidence and submissions himself but which he did not take. The FTT considered the documentary evidence and submissions filed and made on the Applicant’s behalf during the hearing but rejected them for the rational reasons given in the Decision.

24. The FTT did not arguably err in law in refusing the adjournment application, it exercised its discretion rationally and took into account all the circumstances including fairness and justice (see [14]). Ground 2 is dismissed.

25. Ground 3. The Applicant had received more than a reasonable opportunity to present evidence and submissions in writing himself to the FTT. The Applicant’s representative, Mr Nadeem Khan, had received an opportunity to prepare for the hearing, albeit not as full an opportunity as he might have - but this was found to be due to the Applicant’s late instruction for which he was found to be responsible. It is apparent from the Decision that the representative was able to put a clear case in support of the Applicant at the hearing, even if it was rejected by the FTT.

26. The Applicant has not specified in his grounds what information or evidence of fact (documentary or oral evidence) or what legal argument he was deprived of putting forward to the FTT or what might have been presented had the adjournment been granted. He submits that his representative, and hence the FTT, was not fully aware of the background or full facts and there was limited information presented on appeal. However, the Applicant has not indicated what information was missing or would have been material such that it may have affected the outcome of the appeal.

27. The FTT did not arguably err in law in refusing the adjournment and Ground 3 is dismissed.

28. Ground 4. Again, the Applicant has not specified what documents were missing, what they said or why they might have had any material effect on the outcome of the appeal. Those documents have not been provided to the UT.

29. The FTT did not arguably err in law in proceeding as it did and Ground 4 is dismissed.

30. Ground 5. The Applicant has not explained which submissions were made that were not given weight by the FTT or why greater weight should have been given to them. The FTT had given the Applicant and the representatives he instructed a reasonable opportunity to make such submissions or provide evidence before or at the hearing. The FTT took into account all the relevant material that was before it including the submissions of Mr Nadeem Khan and the written evidence in the bundle provided.

31. The FTT was entitled to give the weight it did to the documentary material and gave rational reasons for the conclusions it reached on each issue.

32. The burden on HMRC to prove it made valid discovery assessments and that the penalties were properly imposed. The FTT provided rational reasons for finding so. In relation to the penalties, the issue was essentially factual as identified at [18]: “did the Appellant make a disclosure before HMRC opened an enquiry such that penalties should be calculated on the basis of an “unprompted” disclosure, or was his disclosure “prompted”? The FTT found in the Appellant’s favour – that the disclosures were unprompted and reduced the penalties accordingly. This supports the contention that the FTT fairly and properly considered all the evidence notwithstanding the Applicant’s absence.

33. The burden was upon the Applicant to establish that the assessments were wrong (for example, that they were not made to best judgment or overcharged him). This essentially came down to a factual issue identified at [17]: ‘had the Appellant received rent from the property at Gaviots Close, which was occupied by the Appellant’s brother and his family?’ The FTT gave rational reasons for finding on the evidence provided that the Applicant had failed to discharge the burden to prove he had not received rent (which was taxable and undeclared rental income).

34. There was no evidence as to any property being held on trust and this was not an argument presented to the FTT on behalf of the Applicant either directly by him or through his representatives. Therefore, the FTT could not have erred in failing to take this into account. Furthermore, the argument is late raised on appeal when it could have been put before the FTT. Even if it could be admitted as a fresh issue of fact or law upon appeal to the UT, there is no positive case put beyond a vague assertion without any evidence or argument in support. It holds no realistic prospects of success.

35. The FTT did not arguably err in law in making its Decision and Ground 5 is dismissed.

Conclusion on grounds

36. I refuse permission to appeal on all five grounds of appeal because they do not raise arguably material errors of law in the FTT Decision. I am not satisfied that any of these grounds

holds realistic prospects of success and there is no other compelling reason to grant permission to appeal.

Conclusion

37. Permission to appeal to the Upper Tribunal is refused on all grounds.

Signed:

Date: 7 October 2025

JUDGE RUPERT JONES

JUDGE OF THE UPPER TRIBUNAL