UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

Neutral Citation Number: [2026] UKUT 00290 (TCC)

Applicant: Parvaiz Akhtar	**Tribunal Ref: UT 2025-000140**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING HEARING ON 8 JULY 2026

JUDGE VIMAL TILAKAPALA

1. Parvaiz Akhtar (the "Applicant") applies to the Upper Tribunal (Tax and Chancery Chamber) for permission to appeal against the decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 19 September 2025 (the "Decision")

2. The Applicant applied to the FTT for permission to appeal against the Decision but the FTT refused permission in a decision released on 27 November 2025.

3. The Applicant renewed his application for permission to appeal within the applicable time limit (the "Application"). I refused permission to appeal on the papers (the "UT Papers Decision") and the Applicant applied for that decision to be reconsidered at a hearing.

4. The hearing (the "Hearing") was held on 8 July 2026 at which I heard from Mr Derek Smith of Rennie Smith Accounting for the Applicant, with Ms Heather Sercombe observing for HMRC.

5. On the day before the Hearing it became apparent from the hearing attendance form completed by Mr Smith that he intended to call the Applicant's daughter to provide witness evidence at the hearing. Given the absence of any formal notice to introduce a witness, the lack of explanation as to the evidence the witness was intended to give and the timing of notification, I refused permission for that witness evidence to be given. In refusing permission I took into

account the Tribunal Procedure (Upper Tribunal) Rules 2008 and the overriding objective which is to deal with cases fairly and justly. See further [41] below.

6. The Decision relates to VAT assessments for the periods 12/19 to 03/23 amounting to £29,199.19, those assessments being best judgement assessments issued under s 73 of the Value Added Tax Act 1994 as a consequence of the Applicant's failure to maintain sufficient records.

7. The Decision found that the assessments were made to best judgement and that the Applicant had failed to satisfy the burden of proof on him to support his contention as to the inaccuracy of the quantum of the assessments.

When does an appeal lie?

8. An appeal to the Upper Tribunal from a decision of the FTT can be made only on a point of law (s 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.

9. 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.

The grounds of appeal

10. The Applicant did not formally provide any additional material for the Hearing, Mr Smith said that he intended to rely on the material submitted previously for the paper application. He did however submit, without advance explanation, an Excel spreadsheet headed "gross profit" listing various grocery items and cigarettes together with columns setting out their cost, "rrp", VAT and gross margin. As he did not seek to refer to it at the Hearing it was not necessary to consider its admissibility.

11. In his Application, rather than setting out specific grounds for appeal to the Upper Tribunal, the Applicant rather confusingly, framed his grounds of appeal by way of a series of "responses" to the FTT's decision refusing his application for permission to appeal (the "FTT Refusal").

12. In determining this renewal it is necessary therefore to have regard to the grounds submitted by the Applicant to the FTT, the FTT Refusal, and the Applicant's "responses" together with the oral submissions made by Mr Smith at the Hearing.

13. The Applicant "responses" refer to seven numbered grounds of appeal. I deal with these below referring to my UT Papers Decision and to the additional submissions made at the Hearing.

Ground 1

14. This ground relates to a procedural issue at the FTT hearing concerning the attendance of HMRC's witness. The point was resolved and is no longer a live ground of appeal.

Ground 2

15. This ground is that in making its assessment, HMRC did not use the "most complete month's data for the assessment".

16. The Applicant's specific contention was that the data for September 2022, the month used as the basis for the assessments, was incomplete, whereas complete (or more complete) data was available for August and July 2022.

17. The FTT Refusal in relation to this ground states that this was not a submission made at the FTT hearing or in reply to HMRC's statement of case, nor was it put to HMRC's witness.

18. In his "response" the Applicant stated that (i) a question was in fact raised in its reply to HMRC's statement of case and (ii) he recollected that the witness was asked to clarify the period used for the assessments. The Applicant pointed to an excerpt from its reply to HMRC's statement of case which he considered to show his challenge to HMRC.

19. The excerpt provided by the Applicant is as follows:

> "We note that Officer Calderwood based her assessments on the z readings for October 2022. As far as we are aware the period of review was the quarter to September 2022 and the email of 23 August 2023 makes reference to a visit on 5 October 2022. The detailed calculations in that email make no reference to October 2022.
>
> We also note that Officer Calderwood consulted with a VAT consultant and was advised to assess for all periods since VAT registration. She followed that advice but was it to the best of her judgement?"

20. In my UT Papers Decision I regarded this excerpt as showing simply that the Applicant questioned whether September rather than October was the month used as the basis for the assessments. The Decision shows that the FTT proceeded on the basis that September 2022 was the correct month and all discussions relating to the assessment were based on computations for September. It seems therefore that the reference to October in HMRC's statement of case was a mistake.

21. Other than pointing out the incorrect reference to October, there is no indication in the Decision of the Applicant challenging the month on which the assessment was based by reason of its records being incomplete.

22. An appeal to the Upper Tribunal is limited to errors of law. It is not a process intended to give an applicant an opportunity to re-litigate matters (see *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 where Lewison LJ stated that "the trial is not a dress rehearsal. It is the first and last night of the show").

23. The role of the FTT is to determine matters of fact and to reach a decision based on the facts so found. It is therefore incumbent on the parties to present those facts to the FTT. In my

UT Papers Decision I concluded that as the point raised by the Applicant was not put to the FTT, the failure to address it could not be regarded as an error of law in the Decision.

24. Mr Smith raised this point again at the Hearing suggesting that he *might* have raised the point at the FTT hearing notwithstanding it not being reflected in the Decision. He conceded, however, that he could not be certain.

25. His additional submission does not alter the conclusion reached in my UT Papers Decision.

Ground 3

26. This ground of appeal relates to the FTT's dismissal of the Applicant's explanation for the number of "no sales" recorded by his till for the relevant period.

27. Here the Applicant took issue in its "responses" with the FTT's conclusion (at Decision [49]) that the reasons given by the Applicant to explain the number of "no sales" shown on its till records were "not logical or credible" and contended that the FTT did not properly consider the lottery card explanation. The key points made by the Applicant were that the FTT did not consider that customers might purchase more than one lottery scratch card at a time or that they might purchase scratch cards when making other purchases with the lottery scratch card sales being placed in the till whilst it was open.

28. The Decision at [45] – [50] records the FTT's discussion of the "no sales" issue.

29. In those paragraphs the FTT considers the information provided by the Applicant in its totality, noting first (at Decision [45]) that his explanations for the "no-sales" shown in the till records were inconsistent. At the initial visit he said it was because of the till jamming and stated that that lottery scratch card sales were not put through the till. He later said that lottery scratch cards were put through the till but no sales were recorded. Separately he said that some of the "no-sales" were due to people waiting at a nearby bus stop seeking change. Finally it was suggested (see Decision [49]) at the FTT hearing that some of the "no-sales" were due to mistakes made by the Applicant's daughter.

30. The FTT also considered an analysis of lottery invoices prepared by Mr Smith (see Decision [46]).

31. On my reading, the FTT's conclusion that lottery sales being the reason for till no-sales was not an explanation for the number of no sales was based on simple arithmetic. In short – if as per the Applicant's contention – there were over 1,400 lottery transactions, the number of no sales should be higher than 529. As stated in Decision [47]:

> "we do not consider that the lottery scratch card sales provide an explanation for the number of no-sales – there were, on this analysis, almost three times as many lottery scratch transactions as unexplained no-sales records."

32. The FTT's overall conclusion that the "no-sales" were "far more likely" to be sales that were not correctly rung up is a conclusion drawn by it from the evidence in its totality.

33. In my UT Papers Decision I considered that no arguable error of law was identified in this ground of appeal. The points raised by Mr Smith were evidential points that should have been raised at the FTT hearing. I also considered the FTT's conclusions to be clearly within the range of conclusions that it was entitled to reach from the information presented to it and its view of the credibility of the evidence provided.

34. Mr Smith raised this ground again in the Hearing.

35. He made two points. His first point was that the Applicant's explanations for the discrepancies were not inconsistent. They were instead a combination of different explanations. His second point was a re-assertion that the FTT did not appear to have taken into account the possibility of customers buying more than one scratch card at a time.

36. Mr Smith's additional points relate again to the evidence before the FTT. They are points that ought (to the extent they were not) to have been raised at the FTT hearing. His additional submissions do not alter the conclusion reached in my UT Papers Decision and I see no arguable error of law in this ground of appeal.

Ground 4

37. Ground 4 is a contention that no consideration was given by the FTT to the Applicant's explanation that the till had jammed.

38. In the FTT Refusal, the FTT noted that the Applicant had raised this point in its initial meeting with HMRC but that no submissions or evidence on this point were provided.

39. The Applicant's "response" was as follows:

> "Whilst this may be part of the explanation for the no-sales there was no evidence to support it. It was considered that there was sufficient evidence to support the lottery scratch card explanation which the panel noted was in excess of 3 times the number of no-sales. If that evidence was dismissed, out of hand, I believe we made the correct decision not to emphasis the matter of the till jamming.

40. In my UT Papers Decision I concluded that the "response" did not identify an actual ground of appeal.

41. At the Hearing Mr Smith explained that he had intended to ask Mr Akhtar's daughter to provide additional evidence as to the till jamming. As outlined above I refused permission for Mr Smith to do so. Leaving aside the issue of the timing of his request, it related to evidence that should have been put before the FTT and was in my view an attempt to re-litigate the matter in question.

42. Accordingly I remain of the view as set out in my UT Papers Decision that no ground of appeal has been established in this regard.

Ground 5

43. This ground of appeal goes to the correctness of the quantum of the assessments, with the Applicant contending that HMRC's computation of amounts for September 2022 was inaccurate as it included amounts duplicated in the figures for July 2022.

44. The Applicant's "response" accepted that this point had not been put to HMRC's witness at the FTT hearing but contended that it was apparent from information included in the hearing bundle.

45. As I outlined for Ground 2, an appeal is not an opportunity to re-litigate matters and the failure to raise an issue before the FTT cannot ordinarily give rise to an error of law by the FTT.

46. I also pointed out that inclusion of material in a hearing bundle does not necessarily mean that it can be assumed that the tribunal will take account of it. If a party wants the tribunal to consider a document then that party should specifically refer the tribunal to it in the course of the hearing (see for example *Adelekan v HMRC* [2020] UKUT 244 (TCC).

47. In my UT Papers Decision I concluded that this ground did not identify an arguable error of law.

48. Mr Smith raised this ground again at the Hearing. He conceded however that he could not in fact remember whether he had or had not raised the point before the FTT noting that no transcript of the hearing was available.

49. My conclusion therefore remains as it was in my UT Papers Decision.

Ground 6

50. As with Ground 5, this ground goes to the correctness of the quantum of the assessments, in this case relating to double counting of carried forward sales and confusion in relation to a "missing sale".

51. The FTT Refusal addressed the issue of double counting and the Applicant's "response" is limited to the missing sale.

52. The FTT Refusal stated that the Applicant provided no date for the missing sale at the FTT hearing and that the information used was as set out in its Grounds of Appeal.

53. The Applicant's "response" accepted that the information stated in its Grounds of Appeal was incorrect but contended that information in respect of the missing sale was contained in the hearing bundle and had been clearly taken into account in the calculations.

54. As with Ground 5, I considered this an attempt to re-open a factual matter that ought to have been raised before the FTT. Further, as with Ground 5, the inclusion of material in the hearing bundle does not equate to the point being drawn to the attention of the Tribunal for consideration.

55. I did not therefore regard this ground as identifying an arguable error of law.

Ground 7

56. This ground is also concerned with the quantum of HMRC's assessments. It relates to the Applicant's disagreement with the profit margin assumed by HMRC in the best judgement assessments.

57. The specific contention in the Applicant's "responses" was that the FTT denied Mr Smith the opportunity to explain the significance of the evidence relating to margins which had been provided by the Applicant and was contained in the hearing bundle. As a result, that evidence had not being taken into account by the FTT.

58. In my UT Papers Decision I concluded that no error of law had been identified as (a) there were clear reasons as to why Mr Smith was not permitted to give evidence (he was seeking to provide expert evidence which had not been directed by the FTT (see Decision [33])), and (b) the evidence that was before the FTT had been considered by it and was regarded as insufficient to displace HMRC's assumptions as to the margins achieved by the Applicant (see Decision [44]).

59. At the Hearing Mr Smith asserted that there was documentary evidence in the hearing bundle that supported the Applicant's arguments as to his actual margins and the incorrectness of the margins assumed by HMRC.

60. He referred to paragraph [43] of the Decision which stated that:

> "... there was no documentary evidence in support of Mr Smith's contentions as to the proportion of sales or the margins achieved …"

61. He turned to two specific items in the bundle. The first item (at page 148 of the hearing bundle) was a cash and carry receipt for cigarettes and tobacco amounting to £397.56 (ex VAT) dated 26 September 2022. The second item (at page 149 of the hearing bundle) was a cash and carry receipt for groceries amounting to £359.33 (ex VAT) dated 28 September 2022.

62. Each receipt showed columns of prices for the individual items purchased. One column was headed "rrp" – this showed the recommended retail price. Another column showed the actual price charged by the cash and carry.

63. Mr Smith contended that the difference between the rrp and the cash and carry price on each receipt was evidence of the Applicant's margins for cigarettes and groceries respectively. On this basis he contended that paragraph [43] of the Decision was incorrect.

64. Mr Smith accepted, however, that there was no requirement for a retailer to sell products at rrp nor was there evidence to show that the Applicant had actually done so. He also acknowledged that establishing the margins achieved for the relevant periods would require a very significant degree of extrapolation from these two individual receipts.

65. The Decision refers to the FTT having considered the "limited documentary evidence" in the bundle. Paragraph [43] refers to evidence as to "the proportion of sales or the margins achieved". The invoices do not show the margin achieved by the Applicant in respect of the items listed nor do they show the margin achieved by the Applicant for the goods actually sold

by it over the relevant period. They are at best evidence of the purchase price paid for certain items on two days and the price at which they are recommended to be resold.

66. Accordingly I remain of the view set out in my UT Papers Decision that no error of law is identified in this ground.

67. At the Hearing Mr Smith raised an additional point. This was that HMRC could not have been correct when they claimed to have considered, prior to issuing the best judgment assessments, the Applicant's arguments as to lottery sales being a reason for the "no sales" recorded by the till. This was because the Applicant had provided his lottery statements to HMRC only after issuance of the assessments.

68. I do not regard this as indicating an arguable error of law in the Decision. One of Mr Smith's contentions at the FTT hearing was that HMRC did not consider the explanation as to lottery tickets and this was taken into account by the FTT in making its determination (see Decision [26]). Mr Smith also acknowledged that the Applicant would have made his position on the lottery tickets clear to HMRC before providing HMRC with the statements and it was not therefore the case that HMRC would only have become aware of his arguments following provision of those statements..

Decision

69. For the reasons given above I am not satisfied that any of the grounds advanced disclose any arguable error of law in the Decision. Permission to appeal is therefore REFUSED.

Signed: **Vimal Tilakapala** **Judge of the Upper Tribunal**	**Date: 30 July 2026**
Issued to the parties on: 31 July 2026	