

ICTA 1988 s.380(1) – Loss relief – Time limit for claim – Power of appeal
Commissioners to review Inspector's refusal to extend time

THE SPECIAL COMMISSIONERS

MR PRIVET Appellant

-and-

THE COMMISSIONERS OF INLAND REVENUE Respondents

Special Commissioner: MR B M F O'BRIEN

Sitting in Belfast on 1 May 2001

Mr Edward Russell, Opus, Chartered Accountants, for the Appellant

Mrs M B McAuley, HMIT, for the Respondents

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ANONYMIZED NOTE OF ORAL DECISION

1. This matter came before me in Belfast on 1 May 2001.
2. Mr Privet carries on two trades : the first, as a haulier which is profitable - and the second as a publican. The accounts of the latter trade relevant to the four years of assessment 1992-93 to 1995-96 inclusive showed losses in each year.
3. One way of dealing with those losses is provided by s.385 ICTA 1988 carry-forward for set-off against profits of the trade in a subsequent year. For that reason, the Inspector has agreed the amounts of the losses. Mr Privet, however, seeks relief by the means provided by s.380 set-off against taxable profits from other sources (viz, the haulier profits) for the same year.
4. The right to avail of s.380 relief is, however, subject to a significant condition. At the relevant time, the claim for such relief had to be made "by notice given within two years after the year of assessment". A claim in respect of a 1995-96 loss, for example, would accordingly have to be made not later than 5 April 1998.

5. In fact, the 1995-96 claim was made on 15 March 2000, nearly two years late. The claims in respect of the three earlier years were made on the same or a slightly later date and were accordingly even further out of time. (In three of the four years the time limit had actually expired before the accounts were delivered to the Revenue by Mr Privet's former accountant.)

6. It is common ground that there are circumstances in which the Inspector will allow relief along s.380 lines notwithstanding that the statutory time limit has expired. The criteria for the granting of such concessionary relief have been published by the Revenue. In common with all such concessions, the practice derives from s.1 of the Taxes Management Act 1970, which places the care and management of (inter alia) income tax in the hands of the Board. Furthermore, Mr Edward Russell (of Opus Chartered Accountants, Mr Privet's new agents) has satisfied me that officers of the Revenue's Special Compliance Office may sometimes accord relief even in circumstances beyond those covered by the published criteria, when negotiating a global settlement following an investigation of a taxpayer's affairs.

7. Mr Russell accepted that the Taxes Acts do not give this Tribunal express power to extend the time limit in s.380 (parallel, for example, to that in s.49 of the Taxes Management Act in relation to the time limit on bringing an appeal); but proceeded on the footing (I presume) that there is an inherent power to do so on equitable grounds. Without s.380 relief, a substantial sum of tax is now payable, and Mr Russell greatly relied on the perceived inequity in not allowing the relief on a concessionary basis to his client when it appeared that a more generous approach might be accorded to taxpayers who had been found to have been in default.

8. I rather think that investigation cases are in a special position because, in negotiating a global settlement, factors other than the tax due come into the picture. Furthermore, as the inspector, Mrs McAuley, reminded me, such cases usually involve the making of out-of-time assessments under s.36(1) of the Taxes Management Act and an extension of time for claims may be required to give proper effect to subs.(3) of that section.

9. Be that as it may, I am satisfied that Mrs McAuley has correctly identified the real question in this case in submitting that this Tribunal has no power to review the Inspector's decision not to admit the claims on a concessionary basis. Sitting as an appeal Commissioner (and not as a High Court Judge hearing an application for judicial review), I would be of the clear opinion that that submission was correct, even if there were no authority. In support of her submission, Mrs McAuley cited the fairly recent (1999) case of *Steibelt v Paling* in which Sir Richard Scott V-C held that appeal Commissioners had no power to review the exercise of a discretion given by statute to the Board. In that case the discretion was explicit but clearly the principle applies equally (perhaps with even greater force) to a case where the discretion is derived merely from "care and management" and the Inspector has declined to disregard the clear words of the statute, as a concession.

10. I cannot therefore help Mr Privet; and if I really have any jurisdiction in the matter at all (which is perhaps doubtful), I can only dismiss this appeal.

B M F O'BRIEN

SPECIAL COMMISSIONER

Released 22nd May 2001