



TC01421

Appeal number: TC2009/16775

Appeal against amendments to self assessments - enquiry closure notices for 1997/98 to 2002/03 inclusive –provisional figures in returns – request for accounts – no accounts prepared – appeal concerning prior years caused difficulties – appeal now heard – accounts still not prepared – change in nature of accountancy business – profits entirely estimated – no invoices – no formal bills rendered – impossible to gauge income or expenses - appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR R G A SENTENCE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDITH POWELL (TRIBUNAL JUDGE)
ELIZABETH BRIDGE (MEMBER)**

Sitting in public at 45 Bedford Square, London WC1 on 14 July 2011

Mr R G A Sentence, the Appellant appeared in person and gave oral evidence

Mr David Lewis, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Appeal

1. This is an appeal against an amendment to his self assessment returns following enquiry closure notices for the years 1997/98 through to 2002/03 inclusive. The amounts of tax were assessed on the basis of profits shown in the last set of accounts submitted to HMRC (for the year 1994). The profit for that year (£16,665) was used as the basis for assessments in the following years with the figures being increased year on year.

10 Facts found or agreed

2. The actual returns for the years in question cannot be traced but the parties have agreed that the return for the year 2003/04 (which can be found) contains identical information in all relevant respects to the missing returns. Computer print outs for the relevant years can be found and the figures shown on these back up the fact that the figures on the 2003/04 return were the same as those on the returns for the missing years.

3. The Appellant used provisional figures in declaring the turnover and expenses for his accountancy business for each of the years in question. He used provisional figures at the time because he had appealed against prior year assessments (for the years 1993/94, 1994/95 and 1996/97) and until he knew the outcome of those appeals he felt unable to prepare accurate figures. He estimated the turnover as £14,999 with estimated expenses of the same amount for each of the years in question. Because the estimated turnover fell below £15,000 in each of the years in question he was entitled to submit what Mr Lewis referred to as “three line accounts” and so his return was not accompanied by full accounts. This did not mean that he was released from an obligation to provide full accounts in due course if requested to do so. Although he estimated the earnings from the business and the expenses to be set against those earnings he did not estimate the net profit which he recorded as £nil.

4. Enquiries under section 9A Taxes Management Act 1970 (“TMA”) were opened for the earliest five returns on 14 January 2005 and for the 2002/03 return on 28 July 2006. The enquiries were closed on 4 September 2008; despite a number of requests the Appellant did not supply HMRC with information concerning the actual income received and expenses incurred during the period of enquiry.

5. The appeals in relation to the years prior to 1997/98 concerned a claim for loss relief. The matters under appeal for those years and any uncertainty they may have caused did not prevent the Appellant from providing figures for the turnover and expenses for his accountancy business.

6. The Appellant held a licence to practice as an insolvency practitioner until 1 April 2004. He decided not to renew the licence when it expired at the end of March 2004. Thereafter his practice concentrated on advisory work mainly concerning the preparation of tax returns and investigations. We accept that this change in his practice may well have caused his turnover to reduce but it is impossible to calculate

by how much and whether the reduction was sustained. He did not inform HMRC of the change in the nature of his practice and the closure notices and the assessments could not have taken this fact into account.

5 7. The Appellant has not prepared accounts for the years in question. He is not registered for VAT purposes. He is still registered with the Institute but is no longer active; he ceased being active some four or five years ago. During the relevant period he did not submit formal bills to his clients. He would tell them how much he wanted to charge them and invited them to send him a cheque for that amount. There was no letter of engagement recording his fee charging structure. He did not receive cash.
10 He may have had a business bank account during some of the period. Given time he could establish his turnover and expenses. He would have to go through his old papers which are stored at his home and establish his turnover and expenses by looking at his bank accounts for the years in question. He says it would take him a long time to do that and we believe him. He estimated that his turnover in each of the
15 relevant years was less than £3,000; cumulatively he believes he had five to ten clients during the entire period.

8. The Appellant explained that he had a large bank overdraft in 1993 and a small mortgage discharged in 2007 when his father died and he inherited money from him. His wife has a pension and he has a small pension. His father gave him money and
20 otherwise he and his wife lived on her pension.

Submissions

9. The Appellant submitted that the Respondents did not make any proper enquiries, that their conclusions were perverse particularly since the profit on which they based
25 their assessments exceeded the estimated turnover on the returns for the relevant years, that there was an abuse of the process and that the assessments were excessive. In particular he felt that the enquiry notices had been withdrawn and so he was no longer obliged to provide the information requested; for that reason the case referred to by the Respondents in their submissions (*M.E. Walsh v. HMRC* Spc00676) can be
30 distinguished and he referred to a copy of the Tribunal's decision notice for the appeals into the years preceding the years in question where the Tribunal confirmed an agreement reached between the Appellant and the Respondents that the assessment for the year 1995/96 would be determined on the basis that the income was the amount of £5,000 and says it is perverse if the assessments for later years can be
35 upheld in a higher amount in view of the change to the nature of his practice.

10. The Respondents acknowledged failures in dealing with the enquiry notices – particularly into the 2002/03 return which was not pursued. However they say that this does not invalidate the closure notices. They say that the Appellant cannot have been under any misapprehension about the need to provide accounts; the Tribunal
40 agreed at the beginning of 2011 to stay proceedings to allow him to provide accounts and yet the Appellant did not provide any evidence to show that the assessments were inaccurate and the burden of proof is on him to do this (*Hurley v. Taylor [1999] STC 1*). In the absence of any information from the Appellant about his turnover and

expenses it was not unreasonable for the Respondents to base the assessments on figures contained in the last set of accounts that had been submitted.

Our decision

- 5 11. We found this a profoundly unsatisfactory case. We understand the Respondents' frustrations concerning the lack of information about income and expenses. We do not understand why the Appellant cannot provide some information to support his appeals other than the general statement that his income reduced once he gave up his insolvency licence. We believe that the Appellant's practice changed when he gave up his insolvency licence. The income may well have reduced but the Appellant gave us no evidence from which we could safely conclude he was overcharged by the amended self assessment. We were unable to establish any reliable information concerning the income and expenses from the evidence of the Appellant at the hearing. The Tribunal itself had given him time to provide information. The Appellant is an accountant. He should be able to provide simple accounts showing his income and expenses particularly if his practice had reduced to the extent he alleged. We agree that the Respondents failure to pursue the notices does not invalidate the closure notices. We agree that in the circumstances it was not unreasonable for them to base these on the only firm information they held. On the basis of the previous stay in proceedings and the repeated request for information we could see no purpose in giving the Appellant further time to provide the accounts. The agreement between the parties about the year 1995/96 was reached on the basis of information we did not have and cannot influence us for other years and accordingly we dismiss the appeals and confirm the amendment to the self assessment.
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- 25 12. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.
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TRIBUNAL JUDGE

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RELEASE DATE: 30 AUGUST 2011