



TC01482

Appeal number TC/2010/02301

Appeal against the amendments made to the Appellant's tax return – appeal allowed in part

FIRST-TIER TRIBUNAL

TAX

G.C.CATANA

Appellant

- and -

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

Respondents

**TRIBUNAL: S.M.G.RADFORD(TRIBUNAL JUDGE)
N.DEE**

Sitting in public at Holborn Bars, London EC1N 2NQ on 8 March 2011

The Appellant in person and Mr Burke for the Respondents

DECISION

1. This is an appeal against the amendments made to the Appellant's tax return for the tax year ending 5 April 2007.

- 5 2. The Appellant disputed the reductions made by the amendments to his expenses in respect of his premises costs, his travel and subsistence, his legal and professional costs and the lack of allowance for his advertising and capital allowances.

Background and facts

10 3. An enquiry was opened into the Appellant's tax return for the year ended 5 April 2007 on 24 June 2008.

4. At the same time a letter was sent to the Appellant's tax adviser, Mr R.Groza asking for an analysis along with receipts in support of the premises costs of £5,200, general administrative £1,600, travel and subsistence £9,000 and legal and professional £1,200.

15 5. Mrs Hayward of HMRC also asked for the CIS vouchers and copies of the bank statements for the relevant period.

6. Mr Groza phoned to say that he no longer had the records which had been returned to the Appellant.

20 7. Mrs Hayward analysed the records on receipt of them from the Appellant and wrote to him to say that the only receipts which related to the expenses claimed were a receipt for diesel amounting to £399.51. She therefore proposed to disallow all the other expenses and reduce the travel and subsistence claim to £400. She informed the Appellant that meals could not be claimed unless there was an overnight stay.

25 8. Mrs Hayward told the Appellant that although he had declared net income of £34,824.05 after deductions of £7,658.50 on account of tax his bank statements showed that a total of £39,377.14 was deposited into his bank account that year. She asked him to explain which deposits did not relate to income.

30 9. On 26 January 2009 she wrote to the Appellant stating that she proposed restricting the amount claimed to tax to the amount shown on the CIS vouchers, £634.76. In the absence of full receipts to substantiate the expenses claimed she proposed to reduce those in line with that claimed in previous years. £850 for premises, £1,400 for travel and subsistence and £850 for legal and professional.

35 10. On 25 February 2009 Mrs Hayward wrote to the Appellant and informed him that his tax return was to be amended to reflect her conclusion that the tax paid figures should be reduced together with the expenses claims as no receipts were produced to substantiate the claims.

11. This meant that the £1,857.50 which had been repaid to him was required to be returned and that there was a further £8,622.90 of tax due.

12. As a result of further correspondence with Mrs Hayward the Appellant sent Mr Hope of HMRC copies of more CIS vouchers and following examination of these he allowed further credit for tax deductions under the Construction Industry Scheme in the amount of £6,275.45. This was made up of £424.01 relating to Bodo Building Services and £6,275.45 relating to Mr Ghiga. He pointed out that although the CIS vouchers had not been provided by the contractors he was prepared to allow the credit.

13. He pointed out however that the gross amount paid to the Appellant on those vouchers amounted to £43,097.69 which was in effect his turnover for the year. The amount declared on his return had been £42,482 and this should therefore be increased to £43,097.

14. As a result of the increase in the turnover he wrote that he was prepared to increase the allowable expenses to £4,700. He noted that the original self-assessment had given the Appellant a £1,857.50 repayment.

15. His further amendments resulted in a £3,475.24 increase in the tax due which was a reduction from Mrs Hayward's previous calculation of an increase of £10,479.95 in the tax due.

16. The Appellant had claimed to work for GTM Services and TSG Contracts during the year in question. HMRC traced GTM Services but found that no returns had been made by them and there was no record of any payments to the Appellant. TSG Contracts had been placed in liquidation and although HMRC contacted the liquidator but they were unable to supply any evidence of tax deductions.

17. HMRC pointed out in a letter to the Appellant that the legislation only allowed for a credit for tax deducted where the amount had actually been paid to HMRC.

25 **Appellant's Submissions**

18. The Appellant stated that Mrs Hayward had asked for the CIS's vouchers, bank statements and sales vouchers. He stated that he had sent her two envelopes containing the receipts for 2006/07, the bank statements and original copies of sales invoices.

19. He had explained to Mrs Hayward that he could not produce the CIS vouchers as they were forwarded to his tax adviser who sent them to HMRC. He had also explained that he could not produce any other documents as he had a car accident in August 2008 and many of his documents were lost or destroyed at the scene of the accident.

20. The Appellant submitted that his opinion was that if expenses were on the list of allowable expenses then they could be claimed.

21. The Appellant submitted that his expense of a British passport should be allowed together with his ex-wife's solicitor's expenses as she was dependent on him in accordance with the indefinite leave to remain granted by the Home Office.

22. The Appellant repeatedly referred to Mrs Hayward's letter of 25 February 2009 and did not appear to have taken on board completely Mr Hope's letter in which he increased the allowable expenses as a result of having received the copies of the CIS vouchers from Bodo Building services and Mr Ghiga.

5 23. In his skeleton argument the Appellant queried Mr Hope's statement that he had increased the Appellant's allowable expenses. He produced some calculations showing the amounts allowed by Mrs Hayward and HMRC officer Lamb on his review. In totalling Mrs Hayward's allowed expenses he reached an amount of £4,500.

10 24. In totalling Mr Lamb's allowed expenses he reached a total of £5,295. The Appellant submitted that considering the amounts allowed by Mrs Hayward and Mr Lamb, Mr Hope had in fact reduced his allowable expenses by allowing only £4,700.

25. The Appellant claimed that the premises costs were claimed as he needed a place to store his equipment and instead of rent he had decorated the landlord's premises.

15 26. The Appellant produced further receipts and invoices to the Tribunal which were in turn examined by Mr Burke.

27. Further to the examination of the receipts it was agreed between the parties that the allowed expenses should be £12,523 and that capital allowances of £150 should be permitted.

20 28. It was calculated and agreed between the parties that these amendments would result in a repayment of £399.07 plus interest.

Decision

29. By consent of the parties the appeal is allowed in part in accordance with the agreement that has been reached between the parties.

25 30. 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
30 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.



TRIBUNAL JUDGE

RELEASE DATE: 4 OCTOBER 2011

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