



TC01610

Appeal number TC/2011/00602

Income tax – under declaration profits – “best of judgement assessments” – should they stand? Yes – reasonable to use bank records to establish figures – interest followed amounts assessed – failure to keep proper records – penalties reduced to 45% – reasonable in the circumstances

FIRST-TIER TRIBUNAL

TAX

MOOSAJI BUDI

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND I LATER CUSTOMS**

Respondents

**TRIBUNAL: ADRIAN SHIPWRIGHT (Tribunal Judge)
HARVEY ADAMS (Tribunal Member)**

Sitting in public at 45 Bedford Square, London WC1 on 6 September 2011

Mr D Charma for the Appellant

William Kelly of HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal by Moosaji Budi ("the Taxpayer") against amendments to the self-assessment returns made by the Respondents ("HMRC") for the years of assessment 2003 – 04, 2004 – 05, 2005 – 06 and 2006 – 07 and against related assessments, penalties and surcharges.
- 10 2. The assessments were made to the officer's best judgement as there were insufficient records because the taxpayers' record-keeping had been poor as was common ground (see below).
3. The details of the assessments etc. made are as follows:

Amendments to Self-Assessment Returns

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Date	Year of assessment	Amount £
14 July, 2010	2003 – 04	10, 036.00
14 July, 2010	2004 – 05	6,254.00
14 July, 2010	2005 – 06	4,090.00 20
14 July, 2010	2006 – 07	6,062.00

Penalties

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Date	Year of assessment	Amount £
14 July, 2010	2003 – 04	22, 825.50
14 July, 2010	2004 – 05	14, 005.70
14 July, 2010	2005 – 06	9,455.44 30
14 July, 2010	2006 – 07	13, 917.20

Surcharges

Date	Year of assessment	Amount £
14 July, 2010	2003 – 04	2, 148.16
14 July, 2010	2004 – 05	1, 389.68
14 July, 2010	2005 – 06	908.78
14 July, 2010	2006 – 07	2, 506.4 0

- 35 4. The parties agree that the figures require further adjustment notwithstanding the earlier adjustments. Accordingly, this is a decision in principle only. The parties are to seek to agree the figures and in default of agreement (which the Tribunal considers unlikely) there is liberty to apply to the Tribunal for the Tribunal to determine the figures. This would be on the basis of this decision in principle and using the
- 40 methodology HMRC adopted and would not readdress the methodology.

Accordingly, it would merely be as to the figures not the method by which they were derived. The Appellant could not use this to reopen the question as to the use of the bank accounts or to seek reconsideration by reference to margins as this has already been determined. It is simply the figures on the method on the basis adopted by

5 HMRC if the parties cannot agree. The Tribunal very much hopes the figures will be agreed by the parties and that this will be done speedily.

5. The total income tax and Class 4 NIC first assessed was some £102,729.28. This was reduced on review to £60,230.84.

10 6. Technically, this appeal was made out of time as it was made to HMRC and not to the Tribunal. HMRC told the tribunal at the beginning of the hearing that they did not wish to take the point that the appeal was made late. Accordingly, we decided to allow this appeal to be heard notwithstanding that it was made out of time as there was no prejudice to HMRC identified by HMRC.

The Issue

15 7. The essential issue is whether it has been shown that the assessments made by HMRC should not be allowed to stand. We remind ourselves that the onus to do this is on the Taxpayer.

Common Ground

8. The following matters were common ground between the parties.

20 9. It was common ground that the taxpayer had not kept full records and had had a problem with record-keeping. We were told that this was conceded as was the fact that the record-keeping was poor. It was accepted by the Taxpayer that not all the figures could be fully verified.

25 10. In those circumstances the taxpayer accepted HMRC were entitled to make best judgement amendments and assessments.

11. It was also accepted that HMRC had to establish the takings figures, the dispute was as to the method for doing this. The Taxpayer considered that using the bank records as a cash basis gave rise to a profit level that was too high if compared to what the Taxpayer considered to be average margins stop

30 12. It was accepted that the date of acquisition of the property at Springfield Road was 1 October, 2003.

13. The motor vehicle log book, capital allowances claims and details of the furnished letting had not been provided nor have full capital statements. [Joint ownership]

35 14. The amounts of personal and private expenditure proposed by HMRC were accepted by the taxpayer.

15. The taxpayer is the sole proprietor of a confectioners, tobacconist and newsagent business in North London. It sells newspapers, bus passes, greetings cards, stationery, soft drinks, tea, coffee, sugar and confectionery.

The Law

40 16. The statutory law in this area is well known and is mainly found in the Taxes Management Act 1970 ("TMA") particularly in sections 8, 9, 28A, 29 TMA. We have not confined our considerations only to these provisions.

17. We were provided with relevant extracts from the TMA etc.

45 18. We were provided with copies of the following cases:

- (1) *Haythornwaite and Sons vs Kelly*
- (2) *Jonas vs Bamford*

- (3) *Norman vs Golder*
- (4) *R vs General Commissioners for Havering*

The Evidence

5 18. We were provided with a volume of documentation. This was an agreed bundle of documents. The documents were all admitted in evidence no objection having been taken to any of the documents.

19. We heard no oral evidence but we did have a detailed witness statement from Mrs Shah, the officer who dealt with the inquiry.

10 **The Facts**

20. From the evidence we make the following findings of fact.

(1) The extent necessary we find as facts in the case the matters set out under the heading Common Ground above.

15 (2) HMRC opened inquiries into the self-assessment returns for the years of assessment 2003 – 04, 2004 – 05, 2005 – 06 and 2006 – 07.

(3) HMRC requested documentation and information and when it was not supplied issued Notices under the Taxes Management Act 1970 requiring the production of documents and information.

20 (4) This was not complied with and penalties were imposed. This was repeated a number of times. The supporting documents to justify the figures in the returns have not been produced.

(5) Some of the information was supplied such as the bank statements but much was not.

25 (6) Till rolls, in particular, were requested by HMRC but these were seemingly unavailable. They have not been produced nor has any evidence of daily takings, drawings or similar matters.

(7) HMC sought (inter alia):

30 (a) All till rolls and daily takings record books;

(b) Cash Book;

(c) Petty Cash Book;

(d) Bank, Building Society, Credit Card Statements, cheque books etc;

(e) All purchase invoices

(f) Receipts and invoices to support all the revenue and capital expenditure etc.

35 (8) Some business bank statements were produced by the taxpayer to HMRC. HMRC used these to produce the amendments to the returns.

(9) Based on the bank account information HMRC made proposals as to additions to the net profit in the returns (letter 21 July 2009). This was not replied to.

40 (10) A reminder was sent but in the absence of a full reply and the documents requested a closure notice was issued and amendments and assessments were made and notified by HMRC to the taxpayer by letter dated 24 September 2009.

(11) The taxpayer's then agent wrote to HMRC saying they wished to appeal against HMRC's finding.

45 (12) It was common ground that there had been poor record-keeping. On review this was one of the reasons for upholding the officer's decision. The review officer noted that "a substantial amount of records were not available for [the officer] to review when she was checking the entries in" the taxpayer's returns. In particular, it was noted that no records of takings were retained by till roll or

similar. The taxpayer had told the officer that the taxpayer did not keep a written record of daily takings, cash expenditure, or cash for personal use. Further rental income was accrued but was not recorded anywhere or declared.

5 (13) As the records could not be relied upon the officer decided to analyse the taxpayer's bank statements to allow her to verify the self-assessment tax returns. It was these analyses that indicated that they were omissions and that the taxable profits were understated.

10 (14) The reviewing officer concluded that overall "there is clearly more banked in your personal and business accounts than declared". She considered this could only come from either rental income for undeclared business income.

(15) What was declared in the tax returns she concluded did not match the documentation and information the taxpayer provided.

15 (16) The officer had also assessed a further £10,000 in each of the enquiry years to reflect any cash drawn for personal use. This was done because there was no record of cash taken from the business and no evidence of cash control within the business. The taxpayer accepted this estimate.

(17) HMRC used the bank records produced by the Taxpayer rather than any statistical or average method to determine the profits etc. They did so on the basis of the information provided to them by the Taxpayer.

20 (18) We consider this to be a sensible and proper way of determining the figures in the particular circumstances of this case. We do not consider that using statistical methods etc. would have produced a fairer results and we so find.

25 (19) We find HMRC acted properly and fairly throughout the inquiry. HMRC gave the Taxpayer every opportunity to provide documents, information and explanations. They also mitigated the penalties substantially and corrected arithmetical errors that had occurred.

The Submissions of the Parties

The Appellant's Submissions in outline

30 21. In essence, the Appellant submitted that:

(1) whilst it was accepted that the officers could make and had made a best judgement assessment they had done so using the wrong method as it was a method that did not produce the fairest result.

(2) The method was unfair because the margins that resulted were too high.

35 (3) Consequently, the assessment should be considerably reduced along with the penalties and the interest.

HMRC's Submissions in outline

22. In essence, HMRC submitted that:

(1) HMRC had taken a reasonable approach the assessments.

40 (2) The assessments had to be made the best judgements and have been done so fairly.

(3) The assessments had not been shown to be unfair or unreasonable. They were based on the bank records showing what cash passed through the bank account. This was a reasonable approach which was not dependent on implying margins. It was based on the taxpayer's own records. "Cash is best" was our summary of what in essence was being put to us.

45 (4) The taxpayer did not dispute that he had not kept full records and had not paid the full amount of tax.

(5) The penalties have been reduced to 45% and so were considerably less than HMRC could have sought to levy.

(6) The interest was what was required by law and was a consequence of the amount of tax that should have been paid.

5 (7) Consequently, the assessment should be upheld.

Discussion

Introduction

23. The issue for determination here, is whether it has been shown that the assessments made by HMRC should not be allowed to stand.

10 *Methodology*

24. We consider that using the records provided by the taxpayer to show what had been received and what had been spent was a sensible and appropriate method.

25. The ingenious arguments put forward on behalf of the Taxpayer were interesting but did not show the assessments made were unfair or unreasonable or should
15 otherwise not be allowed to stand.

26. We do not consider that the method was unfair because the margins used were too high. The reason for this is that the figures used were derived from the records provided by the Taxpayer. We have already found that this was an appropriate method. There was no other source of “hard evidence” available to HMRC. It seems
20 preferable to use the records available rather than estimates on an average or statistical basis or other method not tied to the particular circumstances of this case.

27. Nothing has been shown to us that this was not an appropriate or fair method and we so find.

Discharge the burden of proof etc.

25 28. We find that the Taxpayer has not shown that the assessments made by HMRC should not be allowed to stand.

29. We also record that the Taxpayer could have been more careful particularly in maintaining records and should be in future.

Outcome

30 30. We have found that the Appellant has not shown that the assessments made by HMRC should not be allowed to stand. Accordingly, the Appeal is dismissed.

31. 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
35 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)”
40 which accompanies and forms part of this decision notice.

ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE
RELEASE DATE: 9 NOVEMBER 2011

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