



**TC01892**

**Appeal number: TC/2011/02453**

*CAPITAL GAINS TAX – whether improvements to property an allowable expense – whether “gifted deposit” an allowable expense – appeal allowed in part in respect of improvements and dismissed in respect of “gifted deposit”*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HOWARD SYMONDS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE J. BLEWITT  
MS. S. STOTT**

**Sitting in public at Leeds on 22 February 2012**

**Mr Wine, Wine & Co for the Appellant**

**Mrs Newham, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal against the Closure Notice issued on 16 June 2010 in respect of the tax year ended 5 April 2008, subsequently amended following an internal review by HMRC dated 28 February 2011 which reduced the additional tax assessed from £63,344.20 to £32,856.96, making a total amount payable of £40,696.76.

### *Undisputed Background Facts*

2. The Appellant acquired the property 121 Northfield Road, Crookes, Sheffield on 1 September 2007 for the sum of £194,950.00. The property was disposed of on 1 February 2008 for £325,000.00.

3. The Appellant claimed estimated enhancement costs of £20,000. HMRC disputed this figure on the basis that no documentary evidence supporting the expenditure or detailing the improvements was provided by the Appellant.

4. The disposal of the property was said to have been aided with a "Gifted Deposit" of £60,040 provided by a company called Shevell Properties Limited, of which the Appellant's son was a director. The capital gains computation submitted with the Appellant's return showed a taxable chargeable gain of £37,457.00. No other income was shown on the return.

### *HMRC Review*

5. Following a review HMRC informed the Appellant by letter dated 28 February 2011 that his liability was assessed as follows:

(a) The consideration in the contract of sale of 121 Northfield Road was £325,000.00 which should be used in the Appellant's Capital Gains computation;

(b) The payment of £60,040.00 described as a "Gifted Deposit" does not qualify as an allowable deduction under Section 38 of the Taxation of Chargeable Gains Act 1992 ("TCGA");

(c) No supporting evidence was provided by the Appellant in support of estimated enhancement costs of £20,000.00;

(d) "Other Income" initially assessed in the sum of £75,000.00 was reduced to reflect unidentified deposits shown in the bank accounts of Mr Howard Symonds and Mrs Ann Symonds in the total sum of £6,977.00;

(e) The Appellant's liability for the relevant period totalled £40,696.76.

### *The Appeal*

6. By Notice of Appeal dated 29 March 2011 the Appellant's representative, Mr Wine, appealed against the additional liability in respect of the capital gains. The grounds of appeal confirm that the Appellant accepted HMRC's decision set out in its

review letter of 28 February 2011 in respect of the “other income” assessed in the sum of £6,977.00 but disputed HMRC’s decision that the claimed enhancement expenditure and gifted deposit are not allowable deductions for capital gains.

*Legislation*

- 5 7. The relevant legislation is set out in the TCGA 1992 which provides as follows:

*Section 38: Acquisition and disposal costs etc*

(1) *Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—*

- 10 (a) *the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,*

- 15 (b) *the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,*

(c) *the incidental costs to him of making the disposal.*

- 20 (2) *For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty [or stamp duty land tax]) together—*

(a) *in the case of the acquisition of an asset, with costs of advertising to find a seller, and*

- 30 (b) *in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.*

- 35 (3) *Except as provided by section 40, no payment of interest shall be allowable under this section.*

(4) Any provision in this Act introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

5 for the purposes of this section the amount charged to that tax is regarded as having been charged as the income of B.]

8. Section 17 states:

*Section 17: Disposals and acquisitions treated as made at market value*

10 (1) Subject to the provisions of this Act, a person's acquisition or disposal of an asset shall for the purposes of this Act be deemed to be for a consideration equal to the market value of the asset—

(a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length, and in particular where he acquires or disposes of it by way of gift or on a transfer into settlement by a settlor or by way of distribution from a company in respect of shares in the company, or

15 (b) where he acquires or, as the case may be, disposes of the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or  
20 another.

(2) Subsection (1) shall not apply to the acquisition of an asset if—

(a) there is no corresponding disposal of it, and

(b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset

25 *Evidence and Submissions*

9. On the morning of the hearing Mr Wine on behalf of the Appellant produced a Statement of Case, a letter from Wine & Co to HMRC dated 21 February 2012, completion statement, excel spreadsheet containing a list of names of labourers, together with renovation costs for a similar property and a witness statement of Mr R. Symonds; the Appellant's son. Mr R. Symonds was to be called as a witness on the  
30 basis of his involvement with his father's property. The Appellant did not attend the hearing due to ill health and no request for a postponement was made.

10. The letter from Wine & Co to HMRC dated 21 February 2012 clarified:

35 "that although nothing has changed with regards our chargeable gain calculation, we now realise that we have previously given you some incorrect explanations of the "gifted deposit"

*...some of the information we have given you is misleading, whereby the gifted deposit was in connection with the sale and not the purchase of 121 Northfield Road...*

*This is explained in great detail by Richard Symonds the director/shareholder of Shevell Properties Ltd..."*

5 11. The Statement of Case provided further clarification:

*"A "Gifted Deposit" of £60,040 was paid to the purchasers of the property, Helen Coates and Neil Holland, by Shevell Properties Ltd as the balance required by their Solicitors...*

10 *When Howard Symonds received the proceeds of sale from his solicitors on 13 February 2008, he transferred to Shevell Properties Ltd on 14 February 2008, the sum of £60,040, in order to repay the debt.*

*This is clearly an expense on the sale of the property."*

15 12. It was submitted that the documents in support of the deduction of £20,000 for property improvements were lost when Mr Symonds' vehicle was stolen, however cash payments were made to various contractors by Mr Symonds which could be seen from bank account withdrawals. Mr Wine explained that many of the contractors used were Polish and had left the UK since the sale of the property, as a result of which no further documentary evidence of their work or payment could be obtained. He invited the Tribunal to take a sympathetic view of the evidence in light of the difficulties encountered by the Appellant in substantiating his claim for improvements.

20 13. In respect of the "Gifted Deposit" it was submitted that although no challenge was made to the applicability of the legislation in respect of the definition of "consideration", the amount could fall within s. 38 (1) (c) TCGA 1992 as an incidental cost and we were invited to view the £60,040 as such.

25 14. Mr Richard Symonds gave oral evidence to the Tribunal. He explained that he specialised in buying, renovating and selling terraced properties in Sheffield and had assisted his father in respect of 121 Northfield Road by overseeing the renovation and sale of the property. Mr Symonds stated that the investors who purchased his father's property had also bought properties from his (Mr Richard Symonds') company. The incentive offered on the purchase of 121 Northfield Road were the same as those regularly used by Shevell Properties Ltd and included 15% deposit plus costs including stamp duty, legal fees, broker fees and disbursements.

30 15. As the Appellant did not have the immediately available capital to fund the incentives, Shevell Properties Ltd provided the funds on the guarantee that it would be repaid in full after completion. No contract or documentation existed as this was an agreement between father and son.

35 16. Mr Symonds clarified that the term "gifted deposit" was incorrect although used by his father and Mr Wine, as essentially the figure was akin to a loan or discount.

17. As regards the renovation of the property, Mr R Symonds confirmed that he had his own contractors due to his business and that his father, the Appellant, had utilised that work force in order to save money. He confirmed that the contractors were paid in cash and that the figure claimed for improvements (£20,000) was correct, as  
5 although he could not recall any specific details as to the types of work undertaken, he had previous experience through his business of renovating similar properties and the costs incurred.

18. Mrs Newham on behalf of HMRC highlighted the lack of documentary evidence or detail provided by the Appellant in support of the £20,000 deduction  
10 claimed for improvements to the property. It is right to say that in the substantial amount of time over which HMRC have corresponded with the Appellant and his representative, no information was provided in support of the claim despite HMRC's requests. Mrs Newham, fairly and properly in our view, accepted that the oral evidence of Mr Richard Symonds was relevant to the issue and that, given the  
15 increase in value to the property between purchase and sale by the Appellant, HMRC accepted that some improvements may have been carried out. Mrs Newham submitted that the issue was a factual one for the Tribunal to determine having heard the evidence.

19. As to the issue of the "Gifted Deposit", Mrs Newham submitted that by virtue  
20 of s. 17 TCGA 1992 the issue of the property's market value or consideration must be considered and that the evidence shows this to be the sale price of £325,000. Any payment required to purchase the property did not de-value it and s. 38 TCGA 1992 does not provide for incentive payments as an allowable deduction.

20. Mrs Newham submitted that the incidental expenditure incurred in the sale  
25 totalled £465, which brought the net proceeds down to £324,535.87. Allowable incidental costs are limited to those provided for by the legislation and were taken into account by HMRC as shown by the following computation:

Disposal Value	£324,535
Less Acquisition Value	£197,838
Capital Gain	£126,697
Less Annual Exempt Amount	£9,200
Taxable Chargeable Gains	£117,497

21. HMRC submitted that tax of £40,381.40 is correctly charged and due on the  
30 Appellant's taxable gain of £117,497.

*Decision*

22. Despite our concern as to the fact that the Appellant had only recently clarified his case and the late service of evidence, particularly that of Mr Richard Symonds, with the agreement of HMRC and in the interest of fairness and justice, we admitted the evidence.

5 23. There are essentially two issues for this Tribunal to determine, and we will deal with each in turn.

24. We noted HMRC's concern as to the lack of documentation relating to contractors used to carry out renovations on 121 Northfield Road. It was correctly submitted on behalf of the Appellant that the assertion that the documents had been  
10 stolen was never challenged by HMRC and we therefore accepted this had been the case. Nevertheless, we found that the evidence relating to the improvements carried out from Mr Richard Symonds was vague and we noted the lack of any detail as to what was done, when and how long the improvements took which, in our view, was information which could have been provided by the Appellant at an earlier stage of  
15 HMRC's enquiry. On balance, we were just prepared to accept the oral evidence from Mr Richard Symonds which was corroborated to a degree by the Appellant's bank statements showing cash withdrawals to the total of £16,800; £8,600 to "Mohammed A", who was confirmed as a contractor by Mr Richard Symonds and £8,200 cash withdrawals.

20 25. As regards the amount of £60,040 we accepted HMRC's submission that the starting point was to determine the amount of consideration as per Lightman J in *Spectros International Plc v Madden*:

*"In calculating the chargeable gain arising on the Taxpayer's disposal of the shares, the starting point is to find the consideration for the disposal."*

25 And Millet LJ in *Goodbrand v Loffland Brothers North Sea Inc*:

*"It is implicit that the consideration for the disposal of an asset is the amount or value of the consideration in money or money's worth."*

26. The only evidence in this case as to the consideration is the sale price of the property. Whilst we noted Mr Richard Symond's comments that value and market  
30 price can be influenced by many factors, including how much a person is prepared to pay, the fact remains that the only direct evidence before this Tribunal is the sale price and mortgage provided to the purchasers of £276,250 (85% of the sale price). We therefore could not see any basis upon which it could be said that the value of the property, and therefore the chargeable gain, was less than that arising from the sale  
35 price.

27. The legislation clearly defines what is allowable as an incidental cost to the person making the disposal and we did not accept that the "gifted deposit" or "incentive" could be deemed to be an incidental cost, but rather that it formed part of the consideration.

28. We therefore allow the appeal in respect of costs claimed for improvements in to the sum of £16,800.

29. We dismiss the appeal in respect of the Appellant's claim of £60,040 as an allowable deduction.

5 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  
10 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**

**RELEASE DATE: 16 March 2012**

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