



TC01933

Appeal number:TC/2010/3234

*INCOME TAX – amendment of self assessment returns to reflect
undeclared income of partnership –income not declared – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**(1) GULZAR MOHAMMED
(2) NOREEN ARSHAD
T/A
DIAMOND NEWS**

Appellant

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
MR HARVEY ADAMS**

Sitting in public at 45 Bedford Square London on 7 February 2012

Mr Zafar Hassan of Hassan & Co Accountants for the Appellant

Mr Paul O’Reilly of HM Revenue & Customs for the Respondents

DECISION

Background

1. Mr Gulzar Mohammed and Mrs Noreen Arshad are brother and sister and have traded together in a partnership known as Diamond News since April 2000. The business is a newsagents shop with premises at 4 Neeld Parade Wembley. The present appeal concerns amendments to their partnership self assessment returns following enquiry closure notices in relation to tax years 2003-04, 2004-05, 2005-06 and 2006-07. It also concerns a discovery amendment in relation to tax year 2002-03.
2. Enquiries into the return for 2003-04 were commenced on 27 April 2006 and thereafter further enquiries were commenced into the subsequent tax years. The closure notices and the amendments were issued on 8 December 2008. The amendments were varied following a review by HMRC contained in a letter dated 23 November 2009. The appeal was notified to the tribunal in a notice of appeal dated 25 March 2010. It was therefore some 3 months out of time. Sensibly HMRC do not object to the tribunal extending the time for the appeal and we do so accordingly.
3. The extent to which the amendments described above increase the partnership's taxable profits appears from the table below. The figures in the column for additional profits assessed take into account further reductions made by HMRC following the review decision.

Year	Profits Per Return £	Additional Profits Assessed £
2002-03	14,229	17,416
2003-04	15,028	18,852
2004-05	14,718	18,416
2005-06	19,936	18,887
2006-07	23,182	19,742

4. In broad terms HMRC contend that sums paid into the personal bank accounts of Mr Mohammed and Mrs Arshad are undeclared income of the business. Mr Mohammed and Mrs Arshad contend that they have declared all their income from the business. We heard oral evidence from Mrs Patel, the HMRC officer who conducted the enquiry. We also heard oral evidence from Mr Mohammed and Mrs Arshad. In addition the bundles contained a comprehensive collection of correspondence and other documentation generated by the enquiries which we have taken into account in this decision.
5. Mr O'Reilly on behalf of HMRC correctly submits that the burden is on the appellants to satisfy us that the sums charged to tax by the amendments are excessive. See *section 50(6) Taxes Management Act 1970* and *Brady v Group Lotus Car Companies plc [1987] STC 635* for that proposition. The question for us therefore is

whether we are satisfied on the evidence we have heard and seen that the assessments of additional profits are excessive. We answer that question and make our factual findings on the basis of the balance of probabilities.

The Evidence

5 6. At the invitation of the Tribunal and Mr Hassan HMRC opened the appeal and presented their evidence. Mr O'Reilly outlined the issues as we have set them out above and called Mrs Patel to give evidence. We were provided with her written proof of evidence which we read and which she confirmed in her oral evidence. Mr O'Reilly then proceeded to deal with a number of matters in chief. It became apparent during the course of examination in chief that Mrs Patel was reading from a script which contained a number of pre-prepared questions and answers. We were surprised and concerned that evidence should be dealt with in that way and we consider it inappropriate. The evidence of a witness should not be coached, still less should it be the subject of a pre-agreed script. Mr O'Reilly said it was because Mrs Patel was nervous about giving evidence. We make no criticism of the particular officers involved in this appeal, but we do wish to make it clear as we have had cause to do on another occasion that the practice should cease.

7. Mrs Patel described the progress of her enquiries and the basis upon which she came to make the amendments to the partnership self assessment returns. To the extent that this section of our decision recites the progress of Mrs Patel's enquiries it is not contentious. We will identify and deal in more detail in the following section with those matters that are in dispute.

8. At the outset Mrs Patel asked for a number of documents and information relating to the tax year 2003-04 including all the books and records and also the personal bank accounts of Mr Mohammed and Mrs Arshad. Mr Hassan acted for the appellants throughout the enquiry and provided the prime records of the business and certain other documents and information to Mrs Patel.

9. There was a meeting between Mrs Patel, Mr Mohammed and Mr Hassan on 22 October 2007. At that meeting Mrs Patel discussed, amongst other things, the operation of the business bank account at Nat West. Mr Mohammed had a standing order of £250 per week drawings paid from the business bank account to his personal bank account. In addition he stated that he had drawings of £100 per week in cash. From these sums he gave £175 per week to Mrs Arshad as her drawings.

10. Following the meeting Mrs Patel repeated her request for copies of Mr Mohammed's personal bank account and also asked how Mrs Arshad took out her drawings from the business. Mr Hassan replied to this request on 14 February 2008 stating that Mr Mohammed lived with his sister at this time (2003-04) and would pay her whenever it was convenient. He also enclosed personal bank statements for Mr Mohammed and Mrs Arshad. At the same time Mr Hassan noted Mr Mohammed's statement that he had borrowed about £16,500 during 2003-04 from family and friends to "*join the business*". He also stated that the amounts deposited into accounts of Mrs Arshad were from her husband who used to run a shop in central London.

11. Mrs Patel carried out an analysis of the appellants' personal bank accounts for the tax year 2003-04. That analysis may be summarised as follows:

	Automated Credits £	Unidentified Credits £	Identified Credits £
Mr Mohammed	14,000	16,826	5,056
Mrs Arshad		9,120 (Cash) 9,677 (Cheques)	6,644

12. The automated credits of £14,000 represented transfers from the business account to Mr Mohammed's personal account, including the £250 per week drawings. The identified credits of £5,056 in Mr Mohammed's account were a loan from Nat West Bank. The identified credits of £6,644 in Mrs Arshad's account were a loan from MBNA Europe (£6,000) and a payment from the London Borough of Brent for housing benefit (£644). Mrs Patel was concerned to identify the source of the unidentified credits and asked Mr Hassan to provide documentary evidence. Mr Hassan replied that Mr Mohammed had no paying in slips but would provide full details of the family and friends he had borrowed money from. As for Mrs Arshad it was said that "*she received most of the monies you mentioned in your letter from her husband*". Mrs Patel asked for supporting documentation.

13. In the absence of any documentary evidence Mrs Patel amended the return for 2003-04 to increase the taxable profit by £37,000. This included approximately £36,000 for the unidentified credits, together with £500 for under declared commission and £503 for a duplicated purchase invoice. Mr Hassan had previously agreed the latter two items and they are not in dispute in this appeal. Mrs Patel also amended the assessments for the other years under consideration.

14. On 5 January 2009 Mr Hassan notified appeals to HMRC against the amendments on the grounds that information which he was intending to supply by 30 January 2009 had not been taken into account. On 27 January 2009 Mr Hassan provided some further documents and information. In particular he contended that:

(1) The unidentified credits to Mr Mohammed's account included £6,543 credited on 18 November 2003 being a loan which was subsequently repaid on 11 December 2003. Ultimately this explanation was accepted by HMRC

(2) The unidentified credits to Mr Mohammed's account also included £9,510 said to be loans from family and friends for the purchase of a flat in 2003. We deal with the evidence in relation to this issue in more detail below.

(3) The unidentified credits to Mrs Arshad's account comprised £16,000 received from her husband and £2,797 received from Diamond News. Again, we deal with the evidence in relation to this issue in more detail below.

15. On 2 April 2009 Mrs Patel sought further documentation in relation to these matters. In the absence of a reply, on 21 July 2009 she invited Mr Hassan to either

request a review or appeal to this tribunal. In response Mr Hassan enclosed some further documentation concerning the purchase by Mr Mohammed of a flat in 2004 and the financing of that transaction. In due course Mr Hassan asked for a review of the decision to amend the partnership profits. The outcome of that review was notified
5 to the appellants by letters dated 23 November 2009.

16. In relation to Mr Mohammed, the result of the review was to accept that the unidentified credits included £6,544 (a loan from Nat West) and £2,110 (a sum paid by Mr Qamar, a family friend). The additional profits were therefore reduced to £8,172. In relation to Mrs Arshad, the result of the review was to accept that £2,797
10 represented sums drawn from the partnership. The additional profits were therefore reduced to £16,000. In total, therefore, the additional profits assessed following the review amounted to £25,175 being £8,172 paid into Mr Mohammed's account, £16,000 paid into Mrs Arshad's account and £1,003 agreed with Mr Hassan.

17. In response to the review Mr Hassan said that he had further information. The review officer advised him that the only route open following the review was an
15 appeal to the tribunal. On 4 March 2010 Mr Hassan wrote to Mrs Patel indicating that he wished to appeal the decision. The grounds were as follows:

- (1) He provided further details of loans said to have been taken by Mr Mohammed to purchase a flat in the year ended 5 April 2004.
- 20 (2) He provided evidence as to the income of Mrs Arshad's husband which, it was said, was the source of deposits to Mrs Arshad's bank account.

18. The notice of appeal was lodged on 25 March 2010. The grounds of appeal are broadly that the appellants can establish the various sources of the sums paid into their personal bank accounts, as set out above.

25 19. The parties continued to discuss the issues in correspondence whilst the appeal procedure continued. On 7 September 2010 Mr Hassan lodged the appellants' list of documents. The list included a narrative where for the first time another explanation was given for the deposits into Mrs Arshad's account as follows:

30 *"Mrs N Arshad has been doing Child Minding and Foster Carers Work since 2001 and there have been fair amounts of income every year that was not declared. She has been under the impression that this income is not taxable and should not be declared. These monies were deposited into the bank and could help to clear the queries of Inland Revenue."*

20. In the light of that explanation there was a further meeting this time involving
35 both appellants, Mr Hassan and Mrs Patel on 24 March 2011. Following the meeting and further information provided by Mr Hassan, HMRC accepted that cash sums deposited into Mrs Arshad's account amounting to £6,323 would be treated as income from her child minding business in 2003-04. We were told that this sum was now the subject of a separate enquiry by HMRC. HMRC considered that the balance of £9,677
40 (cheques paid into the account) was still unexplained and would be treated as profits

of the partnership. The total additional profits for 2003-04 which remain in dispute are therefore as follows:

Sums deposited to Mr Mohammed's account	-	£8,172
Cheques deposited into Mrs Arshad's	-	£9,677

5 21. These sums were also used to amend earlier and later years based on the retail prices index.

22. In addition to the progress of the enquiry described above it was not disputed that the partnership records included a sales day book which included details of cash spent in the day and cash held at the end of the day. The totals of these sums were recorded as the daily takings. The truth of entries in the sales day book was in issue. 10 Cash was held in a safe and was generally banked on a Tuesday however there was no separate record of cash banked and no record of cash drawings. A till was used but no till rolls were retained.

Submissions of the Parties

15 23. The way in which the enquiry and this appeal have progressed have crystallised two factual issues for determination by us:

(1) The extent to which, if at all, credits to Mr Mohammed's bank account which HMRC describe as unidentified can be explained as loans paid to Mr Mohammed by family and friends.

20 (2) The extent to which, if at all, credits to Mrs Arshad's bank account which HMRC describe as unidentified can be explained as sums paid to her by her husband.

24. Mr Hassan advanced the following case on behalf of the appellants. He contended that the assessments had the effect of increasing profits over the 5 years assessed by some £93,000 which was not credible. The business had hardly any 25 cheque income. All the income from customers was either in cash or by debit and credit cards. The sales day book was written up once or twice a week by the appellants. They were not educated people. There was a lot of competition in the area, the appellants had been struggling to make ends meet and Mr Mohammed was on 30 benefits. If they had been earning the profits shown by the assessments the appellants would not have been in that position.

25. Mr O'Reilly contended that the accounting records of the business were unreliable. There was a burden on the appellants to establish the source of lodgements to their bank accounts. They had failed to produce reliable evidence to explain those 35 lodgements and HMRC were entitled to infer that they were takings from the business.

Decision

26. In this section we consider the two broad issues described above.

Payments into Mr Mohammed's Account

27. The unidentified receipts in dispute total £8,172. The question for us is whether we are satisfied that they are sums received by Mr Mohammed from family and friends, or whether they represent undeclared income of the partnership business. In addition to the sums in dispute the respondents have accepted that £2,110 was in fact a sum paid by Mr Qamar, a family friend. In total therefore the appellants contend that £10,282 was received by Mr Mohammed from family and friends.

28. Mr Hassan provided copies of the personal bank statements of Mr Mohammed and Mrs Arshad in a letter dated 14 February 2008. At that time he was aware that there were unidentified credits of about £16,500. He described this as being "... *from family and friends to join the business*". That is inconsistent with the later claim by Mr Mohammed that the sums were borrowed to finance the purchase of a flat. It is also inconsistent with the fact that £6,544 was a loan from Nat West.

29. It was common ground before us that the flat referred to was purchased by Mr Mohammed in June 2004 for £195,000. There was a mortgage of £185,000 from the Bank of Scotland. Mr Mohammed also told us in evidence that the bank gave him an additional £10,000 when contracts were exchanged so that he had borrowed the full price from the bank. The property was sold on 15 February 2007. Mr Mohammed also said that he repaid the monies he had borrowed from family and friends when the property was sold. His evidence was that he did so by way of cash and cheques.

30. On 27 January 2009 Mr Hassan on behalf of the Appellants provided a breakdown of the sums said to have been used to purchase the flat as follows:

	Mrs Misbah Hussain (Mr Mohammed's sister)	4,000
	Mr A S Qamar	4,110
25	Mrs M Bailey	1,400

		9,510
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31. In each case the claim was supported by a letter from the individual purporting to confirm the amount lent. In each case it was said that the sum was lent in 2003. In the case of Mr Qamar it was said to have been in two instalments, one of £2,110 (which HMRC have accepted) and one of £2,000. Apart from the sum from Mr Qamar which has been accepted because it was separately identified on Mr Mohammed's bank statement there is no other evidence to support these receipts. In particular there is no evidence from the individuals' own bank statements showing cheques paid in the amounts claimed. In the case of Mrs Hussain she states in her letter that the £4,000 was lent in cash. A later letter from Mrs Hussain stated that the £4,000 in cash she had lent to Mr Mohammed came from a "saving committee". No records were provided to substantiate this.

32. On 4 March 2010 Mr Hassan on behalf of the Appellants provided a new letter from a Mr and Mrs Zuberi. Again it was said that they had lent money in connection with the purchase of the flat. The letter identified an amount of £6,885 said to have been paid on various dates in 2003 and 2004. Whilst it was said that Mr and Mrs Zuberi were “*ready to present any proof you want in this connection*”, none was presented.

33. On 3 January 2011 Mr Hassan on behalf of the Appellants sent a further letter from Mrs Hussain purportedly confirming the £4,000 previously referred to, and a letter from her husband Mr Hussain. This letter indicated that Mr Mohammed had looked after a property in Wembley for Mr Hussain whilst he was away and paid the mortgage from rent collected. It was not clear from the evidence what sums were collected or indeed whether they were said to have been paid into Mr Mohammed’s personal bank account.

34. Mr Mohammed told us that he made repayments of the loans by way of cash and cheques after the flat was sold in 2007. No evidence was produced to show any of these sums being repaid to the individuals involved. Given that some of these repayments were said to have been made by cheque the absence of any documentation is surprising.

35. It is also notable that the flat was purchased in June 2004 and yet the loans were said to have been made during 2003. Mr Mohammed’s bank statements also show that the balance on his personal bank account at the end of 2003 was £8.72. No explanation was offered as to what became of the money said to have been loaned in the period from December 2003 to June 2004 when the flat was purchased.

36. The piecemeal manner in which this evidence has been produced, the conflicting descriptions of how much was allegedly lent, for what purpose and by who and the lack of any reliable corroborating evidence leads us to conclude that the sums lodged in Mr Mohammed’s account were not loans for the purchase of the flat. In the light of that finding, and in the absence of any alternative explanation, we find as a fact that unidentified deposits totalling £8,172 in 2003-04 were income from the partnership business.

Cheque Payments into Mrs Arshad’s Account

37. The unidentified cheque receipts in dispute total £9,677. Again the question for us is whether we are satisfied that they are sums received from Mr Arshad, or whether they represent undeclared income of the partnership business

38. In his letter dated 14 February 2008 Mr Hassan stated that the amounts deposited were from Mrs Arshad’s husband who used to run a shop in central London. That was the line consistently taken throughout the enquiry until September 2010, after the appeal had been lodged, when Mrs Arshad admitted through Mr Hassan that some of the lodgements were from her childminding activities.

39. By letter dated 27 January 2009 Mr Hassan stated on behalf of Mrs Arshad that of the amounts deposited into her personal bank account, £2,797 was from the

partnership business but the £16,000 balance was from her husband. On 4 March 2010 Mr Hassan sent to Mrs Patel Mr Arshad's accounts and "*proof of income*". This comprised accounts for a business known as Colonnades News of which Mr Arshad was a partner. However the accounts were for the year ended 30 April 2003. They
5 showed drawings of approximately £16,000 per partner, assuming the drawings to have been taken equally, and net partnership profits of approximately £22,000. There was also a letter from Mr Arshad's accountants. The partnership had ceased and due to a lack of co-operation from the partners they were unable to produce accounts for the period 1 May 2004 to 14 October 2005 when the partnership ceased. For the same
10 reason they were unable to provide a figure for Mr Arshad's drawings in the tax year 2003-04. They did offer an estimate of £13,500 – 14,000.

40. Mrs Arshad said at the meeting on 24 March 2011 that apart from the childminding income, Mr Arshad deposited money into Mrs Arshad's personal account either in cash or directly from his business account. However we have seen
15 no evidence to corroborate this claim. Copies of Mr Arshad's personal bank accounts were provided but they do not establish any payments to Mrs Arshad.

41. Mr Hassan produced a schedule said to explain the deposits into Mrs Arshad's account. It seems from this schedule that Mr Hassan was contending that Mrs Arshad had income of £13,653 from childminding in 2003-04, said to be mostly in cash. It is
20 notable that none of the sources of funds in the schedule relate to Mr Arshad. It was suggested in evidence by Mrs Arshad that she gave sums of money to her husband, which he later gave back to her and were deposited into her account. We do not accept that explanation. The deposits in question were by way of cheque and have not been substantiated.

25 42. In the light of the way in which deposits relating to Mrs Arshad's income from childminding came to light, and the conflicting accounts given during the progress of the enquiry, we are not satisfied that the unidentified deposits came from her husband. We would expect to have seen at least some corroborating evidence if that were truly
30 the case. In fact there is none. In those circumstances we find as a fact that unidentified deposits totalling £9,677 were income of the partnership business.

Generally

43. The prime records of the business include a sales day book. The respondents contended that this gave the appearance of having been written at one time, rather than on an ongoing basis. We were provided with the original sales day book. Based
35 on the evidence we have seen and heard we cannot be satisfied that it was written at one time.

44. It was not disputed that the business maintained a till, but that no till rolls were retained. It appears from Mr Hassan's letter to HMRC dated 15 February 2007 and we find as a fact that he had repeatedly advised his clients to keep till rolls however they
40 failed to follow that advice. No reason was offered as to why the appellants failed to follow Mr Hassan's advice. The lack of any explanation supports our findings above that there was un-declared income from the partnership business.

45. The respondents have applied the understated income from tax year 2003-04 to the other tax years in issue in the appeal. They have done so on the basis that under-declarations will have taken place in those years adjusted for inflation by reference to the retail prices index. Mr Hassan offered no cogent arguments as to why the under-declaration in 2003-04 should be treated as an isolated matter. In the circumstances we are satisfied that there were under-declarations of income in the other tax years at the level assessed by HMRC.

Conclusion

46. In the light of all the evidence we are satisfied that the takings of the business were understated for the tax years in question and that the appeal should be dismissed.

47. 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

RELEASE DATE: 04 April 2012

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