



**TC01940**

**Appeal number: TC/2010/8903**

*INCOME TAX –deductions for accommodation and travel and subsistence – were these wholly and exclusively incurred for the purposes of the profession of actor - was base of operation relevant – was expenditure on food incidental to accommodation in rented flat –taxi fares unsupported by evidence-appeal allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TIM HEALY**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BARBARA J KING**

**Sitting in public at North Shields on 15 March 2012**

**Nichola Ross Martin, of Francis Clark Tax consultancy for the Appellant**

**Ros Oliver, HMRC advocate, for the Respondents**

## DECISION

### **The Issue**

- 5 1. This appeal relates to expenses claimed for accommodation at £32,503, subsistence at £4,094, and taxi fares at £4080, which the appellant included in his self assessment of tax for the year 2005-06.
2. HMRC opened an enquiry into that self assessment and on 27 October 2009 they issued a decision finding that these items were not deductible in accordance with  
10 s34(1)(a) Income Tax (Trading and Other Income) Act 2005 (“ITTOIA”).
3. The appellant argues that these expenses are deductible because he was “itinerant” throughout the year 2005-06 and the expenses are therefore incurred wholly and exclusively by the appellant for the purposes of his profession.
4. HMRC argue that the appellant cannot be classed as itinerant throughout the  
15 whole period from December 2004 to December 2005 because he had moved to London in that period.

### **The evidence**

5. The appellant, Mr Healy, did not appear at the hearing but submitted a statement in evidence. His father in law John Vincent Welch, who maintains some books and  
20 records for the appellant and handles some aspects of the appellants’ diary, gave oral evidence.
6. Bundles of documents and authorities were produced by both parties.
7. Mr Healy is a professional actor. He is well known for parts which have involved the use of his ‘Geordie’ accent. He has appeared in long running television series.
- 25 8. He owns a property in Northumberland, in which he lived for some time, but which is now occupied by his sister-in-law. Mr Healy and his wife, Denise Welch, a fellow actor, have lived in a house in Cheshire since 2001. They moved there when she was appearing regularly in Coronation Street, which is filmed in Manchester.
9. On 9 December 2004 Mr Healy entered into a contract with Billy London  
30 Limited, in which he agreed to appear in ‘BILLY ELLIOT THE MUSICAL’ ( “Billy Elliot”). The initial period of engagement was for the period from 13 December 2004 until 17 September 2005 to include a rehearsal period which started on 13 December 2004 and live performances which were due to start on 24 March 2005 in the Victoria Palace Theatre in London. There was provision for the contract to be terminated on  
35 two weeks notice if the production did not continue until 17 September 2005. In the event, the production continued beyond September 2005 and Mr Healy extended his contract so that he continued in the production until 13 December 2005.

10. Rehearsals were in London and from 13 December 2004 to 24 March 2005 Mr Healy stayed ‘rent-free’ in a friend’s apartment in London.

5 11. On 15 April 2005 Mr Healy entered into a Tenancy Agreement to rent a flat at River Lodge, Grosvenor Road, London (“the flat”) which is just over one mile from the Victoria Palace Theatre. The Tenancy Agreement provided for a fixed term of 52 weeks from 15 April 2005 until 13 April 2006 at a rent of £875 per week.

12. A council tax demand in respect of the flat was produced. It was in Mr Healy’s name but addressed to him at his father in law’s address in County Durham.

10 13. The claim for accommodation expenses amounts to £32,503 and relates to payments made by Mr Healy for the flat over the period from April 2005 until December 2005 only.

14. Further amounts which have been disallowed are £4094 for subsistence which is said to come from eating out in restaurants in London and £4080 for taxi fares.

### **Arguments for the Appellant**

15 15. Ms Ross Martin argues that Mr Healy was an itinerant worker throughout the whole period when he was in London in connection with the production of Billy Elliot. She produced analyses of income received by Mr Healy in the tax year 2005-06 and sought to show that this showed Mr Healy was working in a variety of venues throughout out the year even when Billy Elliot was on in London. Mr Welch in cross  
20 examination agreed that most of this income was earned either in the previous tax year before Mr Healy was involved in the Billy Elliot production or was ‘voice over’ work done in London whilst he was working on the Billy Elliot production.

25 16. Mr Healy’s wife and family remained in Cheshire throughout the time when Mr Healy was working on the Billy Elliot production. His address for correspondence and communication from his agents remained as the address in Cheshire. The address in Northumberland remained for correspondence from accountants, the bank, HMRC and any book-keeping matters, as this is how it had been done historically. The Northumberland address is closer to Mr Welch’s address and Mr Welch’s other daughter resides at the Northumberland address.

30 17. It was argued that Mr Healy could not have gone home to Cheshire every night after evening performances of Billy Elliot. He had the option of staying in a hotel but opted to rent a flat because it was cheaper and because there are less security issues than when staying in a hotel. It was argued that he did not move to London. His base remained in Cheshire.

35 18. It was further argued by Ms Ross Martin that it was usual practice, according to HMRC’s tax manuals, for HMRC to allow the reasonable travelling and subsistence expenses incidental to the accommodation costs in the case of itinerant workers. No tax manuals were produced.

19. It was agreed that there were no receipts for the taxi fares claimed. They were based on an estimate of 12 journeys per week, for 36 weeks, less 12 missed shows, from the flat to the Victoria Palace Theatre plus 30 visits to home in Cheshire and 16 visits to Manchester or London for ‘voice over’ work. It was argued that these were reasonable because they involved travelling in the West End of London at unsociable hours. As Mr Healy was not present it was not possible to obtain any further details from him on these taxi fares.

20. In respect of subsistence it was argued that these were incidental to the accommodation costs. Ms Ross Martin argued that the accommodation costs should be allowed because Mr Healy was an itinerant worker throughout and the subsistence costs should be allowed as incidental thereto.

**Arguments for HMRC**

21. Ms Oliver argued that HMRC do not accept that Mr Healy was an itinerant worker throughout the period of his involvement with the Billy Elliot production from December 2004 until December 2005. They argue that Mr Healy moved to London as his base in that period and that he has not shown that the expenditure on accommodation, taxis and subsistence was wholly and exclusively incurred for the purposes of his profession. The only reason that they have not disallowed his claim for accommodation, travelling and subsistence in the previous year 2004-05, in the period between 13 December 2004 and 5 April 2005, is that they have not at this time sought to make a discovery assessment for that year but it is still open to them to do so.

**The law**

22. The statutory provisions which govern whether a self employed person may deduct expenses from his profits are contained in s34 (1)(a) ITTOIA 2005.

Expenses not wholly and exclusively for trade and unconnected losses.

(1) In calculating the profits of a trade, no deduction is allowed for-

(a) expenses not incurred wholly and exclusively for the purposes of the trade, or

(b) losses not connected with or arising out of the trade.

(2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

23. This rule for expenditure which is deductible (allowable) when computing trading profits is not as restrictive as the “wholly, exclusively and necessarily” rule applied to the expenses of an employee but the expenses must be shown to be “wholly and exclusively for the purposes of the trade.” Expenditure which serves both a business purpose and a private purpose cannot be allowed in full because such expenditure has

a dual purpose. If the expenditure can be apportioned reasonable accurately then the private element is disallowed.

24. There have been various cases which address the question of duality and address the question of the purpose of the expenditure.

5 25. HMRC referred to the case of *Newsom v Robertson [1952] 33TC452* which involved a barrister carrying on his profession partly at home and partly at chambers. It was held that his motives for travelling between these two places were mixed and therefore failed the ‘wholly and exclusively’ test.

10 26. The word ‘itinerant’ does not appear in the statute. It was used by the High Court in the cases of *Horton v Young* and *Weston v Young [1971] 47 TC 60* with the words

‘ .....his trade or profession is by its very nature itinerant.’

27. These cases went to the Court of Appeal where Stamp L J, went on to say

15 ‘I find the greatest difficulty in drawing a line or indicating theoretical differences between expenses of travelling to and from home in cases such as those of itinerant bricklayers, of persons whose business involves travelling, on the one hand , and, on the other, persons such as Mr Newsom in Newsom’s case. The facts of such cases are infinitely variable and one must, in my judgment look at the facts of each case and decide whether the expenses are money wholly and exclusively  
20 laid out or expended for the purposes of the trade or the profession.’

28. In the same proceedings referred to above Denning L J suggested the test of determining a base of operations but this test has not been adopted in all cases heard since then.

25 29. There is no statutory test which says that a base of operations must be established before it can be ascertained whether a tax payer has incurred expenses wholly and exclusively for the purposes of the trade.

30 30. Similarly, assumptions about which professions may or may not have been classed as involving travelling in the past, may be subject to change depending on the circumstances of each case.

31. There is no absolute rule that food and drink can never be allowed. In *Watkis v Ashford Sparkes and Harward [1985] 58 TC 468* food, drink and accommodation at an annual conference was allowed and any private benefit to the taxpayer, was held to be purely incidental.

35 32. The substance of this is that each case will turn on its own facts.

### **Findings re accommodation**

33. Mr Healy is a professional actor who is well known. He has a “Geordie accent” and makes use of this in many of his appearances. Mr Healy has done a wide variety of work in his career involving television work, theatre, pantomime and ‘voice over’ work. There was evidence produced about various productions in which he has appeared in the past. There was no record of exactly where all the filming had taken place or where the stage performances had been. I find that he has worked in a wide variety of places in his career and London has not predominated. This is not a case where an appellant has to “get on his bike and move to London” in order to work. Mr Healy has to be available on the end of a telephone so that his agents can contact him and he has to keep his name in the mind of directors and casting agents. He can do this from any base he chooses and I find that since 1996 he has chosen to live in Cheshire. .

34. The contract which he entered into for his appearance in Billy Elliot was a ‘Standard Contract for West End Theatres’. This provided for termination on two weeks notice if the production was due to close. There was no element of long term stability for Mr Healy. I find that he did not consider moving to London. He agreed to appear in the production and he found it necessary to find accommodation in London for as long as he was appearing in the production. He says that it would have been impossible to travel home to Cheshire each night. I doubt it was impossible but I accept that if he had had attempted to travel home to Cheshire every night after the performances there was a risk that his performance would have suffered. He could have stayed in a hotel but I accept that actors do not keep social hours and there are housekeeping problems and security risks in actors staying in hotels.

35. Mr Healy did not attend to give evidence but I accept that in all probability an actor appearing in a West End production may need to be around for promotional activities connected with the production and for the development of his or her own career.

36. On balance I find that the need to find accommodation in London, so that he had somewhere to stay near the Victoria Palace Theatre, was wholly and exclusively in connection with his profession as an actor. He was not seeking a home in London. I do not find there was duality of purpose. The expenditure on accommodation has been verified.

### **Findings re subsistence.**

37. If Mr Healy had stayed in a hotel he may have found it necessary to eat in the hotel and a record would have been kept in the hotel of the expenditure on food and drink. Reasonable expenditure on subsistence in a hotel might well be found to be incidental to the expenditure on accommodation without a finding that there was duality of purpose.

38. In this case Mr Healy has rented a flat. I do not find that expenditure on subsistence in a flat can be treated as incidental to the rental of that flat in the same way as expenditure on food in a hotel where one is resident.

39. If Mr Healy wishes to deduct the cost of his expenditure on food eaten in restaurants or clubs it has to be considered under the test in Section 34(1)(a) ITTOIA ie was the expenditure wholly and exclusively for the purposes of his profession.

5 40. There was no breakdown about how many meals in restaurants were included in his claim for £4094. There was no record of where these meals were eaten and whether any of these meals involved other members of the cast or of the production team. There was no suggestion that any of these meals were because the director had asked the cast to discuss aspects of the production

10 41. Living in a flat gave Mr Healy the opportunity to expend money on subsistence in the same way as he would have done had he been living at home. There is no evidence to show that he had to eat out, or that he had to eat more, or in a special way or at particular times. In the circumstances I find that he has not shown that the expenditure on subsistence was wholly and exclusively for the purposes of his profession.

15 **Findings re taxi fares.**

42. The flat was just over one mile from the theatre. It may have been possible for Mr Healy to walk to the theatre and he may have done so on some occasions. Mr Healy has produced no receipts for taxi fares and there was no evidence that he did make this journey there and back again, by taxi, on each of the days when he was involved  
20 in a performance.

43. Mr Welch thought Mr Healy may have needed to use a taxi because of the late hour of his return journey but there was no evidence as to the time when Mr Healy returned to the flat and whether it was unsafe to make that journey by any other means. The bank statements produced show that Mr Healy made several visits to the  
25 Groucho Club in Central London and it may well be that Mr Healy went out socialising before or after performances.

44. Other taxi fares are claimed in respect of trips to Cheshire or to do voice over work in London or Manchester. Mr Welch did not know where the voice over work had been done. He accepted that several items which he thought had been done in  
30 Manchester might have been done in London. In any event here was no record of when these pieces of work had been done, just a record of when Mr Healy was paid for them.

45. The onus of showing that his expenditure on travel is wholly and exclusively for the purposes of his profession lies on Mr Healy. I am not satisfied that he has done so  
35 in respect of the taxi fares claimed.

**Decision.**

46. The expenditure on accommodation of £32,503 was made wholly and exclusively for the purposes of Mr Healy's profession as an actor and is deductible from his profits under s34 (1)(a) ITTOIA. It has not been shown that the items of expenditure

on subsistence at £4,094, and taxi fares at £4080 were wholly and exclusively for the purposes of his profession and these are not deductible. The appeal is therefore allowed in part.

5 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  
10 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**Barbara J King**

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**TRIBUNAL JUDGE**

**RELEASE DATE: 30 March 2012**