



**TC01961**

**Appeal number: TC/2011/1473**

***INCOME TAX – Assessments for Unpaid Tax and Penalties – Did the Appellant under declare his business income – Yes – Was the Appellant negligent with the submission of his returns – Yes – Were the assessments excessive – No – Appeals dismissed.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mr SAQAB FARID**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL TILDESLEY OBE  
                  TERENCE BAYLISS FFA FAIA**

**Sitting in public at Tribunals Service, 4<sup>th</sup> Floor, Temple Court, 35 Bull Street,  
Birmingham, B4 6EQ on 7 November 2011**

**The Appellant appeared in Person**

**Mrs Douglas HM Inspector of Taxes for HMRC**

## DECISION

### Summary of the Appeal and Decision

1. On the 7 November 2011 the Tribunal heard the Appellant's appeals against  
5 HMRC's closure notices, assessments and amendments for the three tax years ended 5  
April 2006 and against penalties imposed for the submission of incorrect returns for  
the three tax years ended 5 April 2006.

2. After hearing evidence from the Appellant and Mr Cane, HM Inspector of  
Taxes, for HMRC, the Tribunal announced its decision supported by reasons. The  
10 parties agreed pursuant to Rule 35(3) of the Tribunal Procedure (First-tier  
Tribunal)(Tax Chamber) Rules 2009 that it was unnecessary for the published  
decision to include full or summary findings of fact and reasons for the decision.

3. On 16 December 2011 the Appellant requested written reasons for the decision,  
which was forwarded to the Judge on 30 December 2011

15 4. The details of the additional tax assessed were as follows:

<b>Tax Year</b>	<b>Date of Assessment/Amendment</b>	<b>Additional Income assessed (£)</b>	<b>Additional tax charged (£)</b>
2005/06	24 June 2010	19,728.00	8,088.48
2004/05	24 June 2010	57,633.00	21,7000.00
2003/04	24 June 2010 (originally issued 19 March 2010)	10,947.00	3,283.93

5. The details of the penalties were as follows:

<b>Tax Year</b>	<b>Date of Penalty Determination</b>	<b>Duties on which penalties charged (£)</b>	<b>Penalty charged 30% of duty (£)</b>
2005/06	24 June 2010	8,088.48	2,427.00
2004/05	24 June 2010	21,7000.00	6,510.00
2003/04	24 June 2010	3,283.93	985.00
Total		33,073.31	9,922.00

6. The Tribunal decided that

- (1) The Appellant submitted incorrect returns for the three tax years from 2003/04 to 2005/06.
- (2) The amendment to the self assessment in the sum of £8,088.48 for the tax year 2005/06 is confirmed and stands good.
- 5 (3) The discovery assessments for 2003/04 and 2004/05 are validly made.
- (4) The discovery assessments for 2003/04 and 2004/05 in the sums of £3,283.93, and £21,700 .00 are confirmed and shall stand good.
- (5) The Appeal in respect of the amendment to the self assessment 2005/06, and the discovery assessments for 2003/04 and 2004/05 is dismissed.
- 10 (6) The statutory requirements of section 95 TMA 1970 have been met in respect of the issue of the penalty determinations.
- (7) The Appellant negligently submitted incorrect profits on his returns for the three tax years ended 5 April 2006
- 15 (8) The percentage loading for the tax-geared penalties is reduced from 30 per cent to 20 per cent with the effect that the total amount of penalties due is reduced from £9,922.00 to £6,614.62.
- (9) The Appeal in respect of the penalty determinations dated 24 June 2010 is allowed in part.

### **The Dispute**

20 7. The dispute in this Appeal was whether the Appellant had under declared his business income in his tax returns for the years in question. HMRC's enquiries into the Appellant's tax returns and business affairs revealed a substantially discrepancy between the deposits in the Appellant's building society account and his income declared in the various tax returns. After a detailed investigation including several  
25 meetings with the Appellant's tax adviser HMRC concluded that the only explanation for this discrepancy was that the Appellant had failed to declare the entirety of his business income. HMRC's subsequent assessments were largely derived from the figures supplied by the Appellant's tax adviser.

30 8. The Appellant in contrast contended that the business income declared in the returns were correct. His explanations for the discrepancy between the value of the deposits in his building society account and declared business income were that the deposits at the beginning of any one year were for work done the previous year, and that HMRC had failed to give full account for necessary business expenditure. In respect of the latter the Appellant pointed out that he had to sub-contract some of the  
35 work for which he was paid.

### **Background**

9. The Appellant operated as a sole trader until April 2006 when his wife joined him in partnership. The Appellant worked for contractors not individuals. Most of his

work to 5 April 2006 had been for A Limited<sup>1</sup>. The Appellant was an electrical contractor installing smoke detectors and CCTVs, and carrying out inspections.

10. On 11 March 2008 HMRC opened an enquiry into the Appellant's amended tax return for the year ending 5 April 2006. The Appellant's tax adviser, Marcus & Co, provided the various documents requested on 14 April 2008.

11. On 17 July 2008 Officer Cane met with the Appellant and his tax adviser. The Appellant informed Officer Cane that he had completed the returns except the one to April 2006 which was done by Marcus & Co. The Appellant had rounded the figures but they were not estimated and based on the business records.

12. At the meeting the parties agreed that the most important issue identified was the large discrepancy identified between the value of the business income recorded in the tax return and the value of the deposits in the Appellant's account with Britannia Building Society. In the 12 months to 31 March 2006 the value of the deposits in the Building Society was £160,694 which compared to the VAT inclusive sales of £114,113. The closing debtors figure for the year ending 2006 was likely to be over £40,000 which would produce a sales figure of over £200,000. The projected figure for opening trade debtors in 2005/06 could not explain the level of bank deposits because the declared sales figure for 2004/05 was just £42,000.

13. The Appellant accepted in interview that during 2005/06 he had not received any money from new loans taken out, gifts, inheritances and lottery wins. The Appellant agreed that the only income received by his household during the year was earnings from his employment, his wife's wages, and child benefit. The Appellant also acknowledged that the Britannia Building Society account was the only account he used. The account did not have a passbook or chequebook. He had a card and could withdraw £250 a day at cash machines. The Appellant had been unable to obtain a regular business account because he had a bad credit rating. The Appellant stated that all his business income was deposited into the Britannia account. His wife had her own account, possibly with HSBC.

14. After the 17 July 2008 there followed a series of further meetings between HMRC and the Appellant and his tax adviser. The Appellant supplied additional documentation including the Building Society statements for the whole year to April 2005, and revised income and expenditure accounts which showed a higher business income for the Appellant than that declared in his tax returns. The outcomes of the discussions were as follows:

(1) Officer Cane cancelled the discovery assessments and penalty determinations covering the three years to April 2003. Officer Cane took this course of action because the Appellant informed him that some of his savings at April 2003 had arisen from insurance claims not understated profits. Although the Appellant produced no evidence to corroborate his assertion regarding the

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<sup>1</sup> The Tribunal has kept the name of the contractor anonymous. The Appellant refused HMRC access to the contractor.

insurance claims, Officer Cane accepted the Appellant's word in order to resolve the outstanding matters.

5 (2) Officer Cane accepted the figures supplied by the Appellant's tax adviser for the year ended 5 April 2004 which produced an agreed revised profit figure for that year of £26,947, an increase of £10,947 from the original return. The Appeal against the 2003/04 discovery assessment was determined by agreement in the sum of £3,283.93 under section 54 of the Taxes Management Act 1970.

10 (3) Officer Cane was unable to reach agreement on the profit figures for the tax years ending 5 April 2005 and 5 April 2006. On 24 June 2010 he issued a closure notice for the enquiry year (2005/06), and a discovery assessment for the year to 5 April 2005. Penalty determinations were also raised for tax years, 2003/04, 2004/05 and 2005/6.

(4) On 25 January 2011 Officer Cane's decision was upheld on review.

15 (5) On 21 February 2011 the Appellant appealed to the Tribunal against the assessments.

(6) On 23 September 2011 the Appellant met Officer Cane, and advised him that he would be representing himself at the Tribunal hearing and that he had not agreed the revised figures for the 2003/04 tax year. In those circumstances he wished to have that assessment considered as well at the Tribunal.

## 20 **Burden of Proof and the Tribunal's jurisdiction**

15. HMRC has to establish on the balance of probabilities that the assessments were made in time and that the conditions for a discovery assessment have been met. If HMRC satisfy the Tribunal of these requirements, the burden of proving that the assessments were excessive rested on the Appellant.

25 16. The powers of the Tribunal on appeal against assessments are set out in section 50(6) of the Taxes Management Act 1970:

“If, on an appeal, it appears to the Tribunal by examination of the appellant on oath or affirmation, or by other evidence—

- 30 (a) that the appellant is overcharged by a self-assessment;
- (b) that any amounts contained in a partnership statement are excessive; or
- (c) that the appellant is overcharged by an assessment other than a self-assessment,

35 the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

17. In respect of the penalty determinations HMRC is required to satisfy the Tribunal that the Appellant has fraudulently or negligently delivered an incorrect tax return.

40 18. The Tribunal's jurisdiction for penalty Appeals is set out in section 100B of the Taxes Management Act 1970:

5 “100B(1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to sections 93, 93A and 95A of this Act and the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.

10 100B(2) Subject to sections 93(8) and 93A(7) of this Act on an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but–

(a) in the case of a penalty which is required to be of a particular amount, the Tribunal may–

(i) if it appears to them that no penalty has been incurred, set the determination aside,

15 (ii) if the amount determined appears to them to be correct, confirm the determination, or

(iii) if the amount determined appears to them to be incorrect, increase or reduce it to the correct amount,

(b) in the case of any other penalty, the Tribunal may–

20 (i) if it appears to them that no penalty has been incurred, set the determination aside,

(ii) if the amount determined appears to them to be appropriate, confirm the determination,

25 (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or

(iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate”.

30 19. The powers under section 100B2(b) apply to this Appeal. The Tribunal observes that the provisions of section 50(6) to (8) do not apply in respect of penalty determinations. HMRC rely on those provisions for its proposition that the onus is upon the Appellant to prove that the penalty determination is excessive.

### **Findings of Fact**

20. The Tribunal makes the following findings of fact:

35 (1) The discovery assessment for 2003/04 was issued on 19 March 2010.

(2) The assessment for 2004/05 and the closure notice and the accompanying to the self assessment for 2005/06 were issued on 24 June 2010.

40 (3) The deposits in the Appellant’s account with the Britannia Building Society represented the Appellant’s earnings from his work as an electrical contractor during the years in question. The Appellant accepted this as a fact

(see paragraph 27A of Officer Cane's witness statement dated 27 September 2011).

5 (4) In the years in question the value of the deposits in the Britannia Building Society account significantly exceeded the value of the business income declared by the Appellant in his tax returns for 2003/04, 2004/05 and 2005/06.

(5) The Appellant's explanations for the marked discrepancy between the value of the deposits in his building society account and the value of the declared business income in his tax returns were unsubstantiated and not supported by the documentary evidence in the bundles.

10 (6) The Appellant's explanation that some of the deposits represented earnings from previous tax years was undermined by the fact that as at 31 March 2006 his savings in the account totalled £98,852 which did not include a substantial amount still owed to the Appellant by A Limited for work done in 2005/06. Next Officer Cane's assessment was based on three years of account  
15 records which would have evened out in year variations. Further Officer Cane incorporated an allowance in his assessment for trade debtors which was derived from figures given by the Appellant's tax adviser. Finally the Appellant adduced no evidence that the deposits in the building society account for the  
20 disputed years came from a source other than his earnings. The Appellant's assertion regarding insurance pay outs for work related injuries had been taken into account in Officer Cane's decision to cancel the discovery assessments and penalty determinations covering the three years to April 2003.

(7) Officer Cane had allowed as business expenses deduction all cheque  
25 withdrawals from his building society account that were not obviously for personal costs, and most of the cash withdrawals in arriving at his assessments. In so doing Officer Cane had taken full account of the Appellant's contention regarding the costs of his business expenses, and that he lived frugally. The Tribunal performed a reconciliation of the 2004/05 building society account which confirmed the actions taken by Officer Cane in respect of business  
30 expenses.

(8) The Appellant had, therefore, under declared his income and taxable profit for the years 2003/04, 2004/05 and 2005/06.

35 (9) The Appellant submitted incorrect returns for the years 2003/04, 2004/05 and 2005/06. The scale of the errors was such that the Appellant fell below the standards of a prudent tax payer when completing tax returns. The Tribunal was, therefore, satisfied that the Appellant had been negligent when furnishing the said returns to HMRC.

(10) Officer Cane had full regard to the representations of the Appellant's tax  
40 adviser when fixing the quantum of the disputed assessments. In respect of the year 2003/04 Officer Cane accepted in entirety the tax adviser's representations.

(11) For 2004/05 Officer Cane decided upon a revised profit figure of £79,334 instead of the £63,003 as proposed by the tax adviser. In arriving at this figure Officer Cane, however, accepted the tax adviser's proposals for the business income received (£178,345) and capital allowances totalling £7,000.

5 (12) For 2005/06 Officer Cane accepted the Appellant's tax adviser's proposals except for two instances which were to add £700 to the sales figure which was the remuneration for one job paid in cash, and to reduce the claim for motoring and telephone costs by £2,744. These adjustments produced a taxable profit of £57,403 instead of the revised profit figure of £53,959 as put forward by the Appellant's tax adviser.

(13) The Appellant supplied no alternative figures in respect of quantum.

10 (14) On 11 February 2009 Officer Cane proposed a penalty of 20 per cent of the tax difference. HMRC supplied no justification for increasing the penalty to 30 per cent.

### **Decision**

15 21. The Tribunal was satisfied that HMRC met the necessary requirements for the issue of discovery assessments for 2003/04 and 2004/05. The Tribunal found that the Appellant had been negligent in submitting incorrect tax returns for the years in question. The assessments and the amendment to the self assessment were issued within the required time limits, which were 20 years in the case of the 2003/04 return and six years for 2004/05 and 2005/06 when the tax payer has been careless in completing the return. Technically the Appellant had no right of Appeal against the 2003/04 return because the assessment had been settled under section 54 of the Tax Management Act 1970. This point, however, was not taken by HMRC at the hearing.

25 22. The Appellant accepted that the deposits in his building society account represented his earnings for the years in question. The Appellant was unable to provide a coherent explanation substantiated by evidence for the significant discrepancy between the values of the deposits and the business income declared in the relevant tax returns. The Tribunal was, therefore, satisfied that the Appellant had under declared his business income for the years in question which resulted in a loss of tax.

30 23. The Tribunal considered that the amount of the tax loss assessed by Officer Cane for the disputed years was fair and reasonable. His assessments were based on a strong factual foundation using the value of the actual deposits recorded in the building society accounts for the three years in question. Officer Cane took full account of the Appellant's tax adviser's representations in respect of the allowances against the business income, including the figures proposed for trade debtors and business expenses.

35 24. The Tribunal, therefore, dismisses the Appeals against the assessments for 2003/04 and 2004/05 and against the amendment to the self assessment for 2005/06. The Tribunal confirms the discovery assessments for 2003/04 and 2004/05 in the sums of £3,283.93, and £21,700.00 respectively, and the amendment to the self assessment for 2005/06 in the sum of £8,088.48.

40 25. The Tribunal was satisfied that HMRC had met the requirement for the issue of penalty determinations for 2003/04, 2004/05 and 2005/06 under section 95 of the Taxes Management Act 1970. The Tribunal found that the Appellant had negligently

submitted incorrect tax returns for the years in question. HMRC, however, put forward no cogent reason for altering its original view of giving the Appellant an 80 per cent abatement in respect of the penalties. In those circumstances the Tribunal decided to reduce the percentage loading for the tax-geared penalties from 30 per cent to 20 per cent with the effect that the total amount of penalties due is reduced from £9,922.00 to £6,614.62. Thus the Appeal in respect of the penalty determinations is allowed in part.

26. 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: 17 April 2012**

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