



TC01977

Appeal number: TC/2009/10394

INCOME TAX – whether certain amounts credited to the Appellant’s bank accounts were, as the Commissioners alleged, taxable income from one or more unidentified sources – held on the evidence that the Appellant had discharged the burden of proof on her of showing that there were not – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MISS MEAD ALI

Appellant

- and -

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

**TRIBUNAL: JUDGE JOHN WALTERS QC
 JOHN AGBOOLA FCA**

Sitting in public at Sutton on 15 December 2011

Hyder Ali (the Appellant’s brother) for the Appellant

Colin Williams, HMRC Appeals and Reviews, for the Respondents

DECISION

5 1. The appellant, Miss Mead Ali (“Miss Ali”) appeals against assessments made under section 29 Taxes Management Act 1970 (“TMA”) – which deals with cases where a loss of tax is discovered – for the years ended 5 April 2003 and 5 April 2006. Miss Ali also appeals against amendments to her self-assessment tax returns made in closure notices given under section 28A TMA for the years ended 5 April 2004, 5 April 2005 and 5 April 2007.

10 2. Thus Miss Ali’s income for all years from 5 April 2003 to 5 April 2007 (inclusive) is in issue.

15 3. The Respondent Commissioners (“HMRC”) by the assessments and the amendments allege that Miss Ali’s income was underdeclared to the following extent (however they do not suggest what is the source or sources of such underdeclared income):

	Year to 5 April 2003	£10,000
	Year to 5 April 2004	£9,210
	Year to 5 April 2005	£7,800
	Year to 5 April 2006	£5,000
20	Year to 5 April 2007	£17,700

4. Pursuant to section 50(6) TMA the burden of proof is on Miss Ali to persuade the Tribunal that she is overcharged by the assessments and amendments to her self-assessments.

25 5. We received witness statements from Miss Ali, Dr Zahra Choudhury, and Mr David Heller, Chief Pharmacist, the Surrey and Sussex Healthcare NHS Trust. The last two were character witnesses for Miss Ali. In addition Miss Ali gave oral evidence and was cross-examined by Mr Williams for HMRC. Mr Williams produced two bundles of documents and Mr Ali, on behalf of Miss Ali, produced a bundle of documents.

30 6. From the evidence, we find the following facts.

The facts

35 7. Miss Ali was born on 1 July 1975. She is the lead surgical pharmacist at the East Surrey Hospital and has been in full time employment with the NHS since 1998. She lived with her father, the late Mahmood Ali, until he passed away on 19 July 2005. She was very close to her father, used to accompany him everywhere, and gave him full authority over her financial matters – which meant, in practice, that she allowed him to use her own moneys as if they were his. She let him have access to a safety deposit box, held by Lloyds TSB Bank in her name since 23 October 1998.

8. The late Mahmood Ali was originally from Iraq and had come to the United Kingdom in about the early 1980s to escape persecution. He did not speak English. He left behind in Iraq family members, including his mother. It was only following the downfall of the Iraqi regime in 2003 that he considered returning to Iraq to visit.

- 5 9. Some time later, in 2004, Miss Ali became engaged but the engagement was broken off. The experience of this was very stressful for Miss Ali and she decided to go on a Hajj pilgrimage to get over it.

The year ended 5 April 2003

- 10 10. The assessment in relation to the year ended 5 April 2003 was in the amount £10,000 taxable income. HMRC apparently estimated this amount of undeclared taxable income as a logical consequence of their view that there was £9,210 undeclared taxable income in the following year (ended 5 April 2004). As we have found that the £9,210 deposited in Miss Ali's bank account in the year ended 5 April 2004 did not represent undeclared taxable income, that rationale for the assessment in
15 relation to the year ended 5 April 2003 disappears.

11. Alternatively, if there was a credit of £10,000 to her bank accounts in this year, we accept that on the balance of probabilities this represented the channelling of funds through Miss Ali's bank account and was connected with a trip that her late father wished to make to Iraq.

- 20 12. On either explanation, we find that Miss Ali has shown on the balance of probabilities that she had no undeclared taxable income in this year. We therefore reduce the assessment to nil.

The year ended 5 April 2004

- 25 13. The amendment to Miss Ali's self-assessment for this year was the addition of £9,210 of taxable income. HMRC's case was that there were a number of significant deposits in Miss Ali's bank accounts in this year, which did not derive from her employment and were therefore to be taken to be payments of undeclared taxable income.

- 30 14. We were shown records of deposits totalling £9,210 which were in dispute, in the sense that HMRC were not satisfied that they did not represent taxable income.

- 35 15. We were shown detailed explanations of Miss Ali's NatWest bank statements for the period. We saw the deposits of £2,000, £3,000, £2,100, £2,000 and £110 on 2 June, 3 June, 28 July, 1 August 2003 and 27 February 2004 respectively, with the narrative 'cash deposits (disputed) unknown', and we saw withdrawals of £2,000, £2,000 and £5,000 (total £9,000). These withdrawals were from Miss Ali's Gold Saver account with Lloyds TSB Bank as to £7,000 (payments of £2,000 and £5,000 on 18 and 19 June 2003 respectively) and as to £2,000 were from Miss Ali's NatWest account on 18 June 2003.

- 40 16. The evidence was that these withdrawals (at least to the extent of £9,100) were likely to have been made to credit the account of Mr Hyder Ali, Miss Ali's brother.

17. Whatever the purpose of these transfers, we find that on the balance of probabilities Miss Ali's accounts were used as a conduit for family moneys, which satisfactorily explains to us the deposits of £9,210 and the withdrawals of £9,000. We find on the balance of probabilities that they did not represent Miss Ali's taxable income.

18. We therefore reduce the adjustment to Miss Ali's self-assessment for the year ended 5 April 2004 to nil.

The year ended 5 April 2005

19. The amendment to Miss Ali's self-assessment for this year was the addition of £7,800 undeclared taxable income. We were shown statements of Miss Ali's Gold Service account with Lloyds TSB Bank covering this year and there were round-sum deposits which added up to £7,800¹. We also saw from the bank statements that there were round-sum payments out of the account of £7,000 on 1 November 2004 and a further £1,000 on 15 November 2004. There was also a foreign payment of £18,000 transferred out of the account on 19 August 2004 (see: below in relation to the year ended 5 April 2007) and a cash withdrawal of £4,000 on 22 November 2004, likely to have been required for Miss Ali's Hajj in that year.

20. Mr Williams, for HMRC, frankly said that he could advance no reason for the amendment of £7,800 other than it was an estimate and that a large amount of cash had been deposited in Miss Ali's account without an explanation and that it was a reasonable inference that the sum of £7,800 represented taxable income.

21. The evidence however (which we accept) was that these were five instalments of the engagement mahaár paid to Miss Ali, consequent upon her engagement. A mahaár is a gift given by a Muslim bridegroom to his bride after he (the bridegroom) accepts the bride's offer of marriage. Miss Ali's evidence was that she had received a mahaár from her fiancé but that on the breaking off of the engagement it was returned. The payments out from her account of £7,000 and £1,000 in November 2004 are consistent with this account. Further, Miss Ali's evidence was that later in the year after the engagement was broken off she decided to go on the Hajj pilgrimage to 'help me start over and take a break'. This evidence is entirely credible (and we accept it). It is consistent with the cash withdrawal of £4,000 on 22 November 2004 mentioned in paragraph 20 above. We reduce the amendment of Miss Ali's self-assessment for the year ended 5 April 2005 to nil.

The year ended 5 April 2006

22. The assessment for the year ended 5 April 2006 was in the amount of £5,000 undeclared taxable income. We were shown a bank statement which recorded a receipt of £3,000 into Miss Ali's bank account on 8 April 2005, but no record of a further receipt of £2,000. Mr Williams made it clear that the Commissioners had no evidence of further bank accounts for Miss Ali beyond those which had been disclosed, nor did they allege that the bank statements provided did not give the complete picture.

¹ £3,000 on 21 July 2004; £1,000 on 27 September 2004; £900 on 6 September 2004; £900 on 7 September 2004 and £2,000 on 27 September 2004.

23. The evidence produced by Mr Ali on behalf of Miss Ali was that this receipt of £3,000 related to the return of an overpayment for an ISA. That evidence also showed a cheque deposit of £3,403.99 paid into Miss Ali's NatWest account on 25 July 2005 (source unknown), but no other substantial unexplained receipts. On the
5 balance of probabilities we conclude that neither of these payments represented undeclared taxable income and we accordingly reduce the assessment to nil.

The year ended 5 April 2007

24. The amendment to Miss Ali's self-assessment for this year was to add £17,700 of undeclared taxable income. This figure was arrived at by aggregating receipts into
10 Miss Ali's Gold Saver bank account with Lloyds TSB Bank on 14 August 2006 (£5,000); 21 August 2006 (£5,000); 29 August 2006 (£6,000) and another payment credited on 29 August 2006 (£1,700).

25. The evidence for Miss Ali was that these were four instalments of funds returned from a relative. We have already noted (see: paragraph 19 above) that a foreign
15 payment of £18,000 was transferred out of Miss Ali's Lloyds TSB Bank account on 19 August 2004. This was a transfer to Denmark, to a gentleman called Sadek Al-Matin, with an account with Nordea Bank Danmark A/S in Copenhagen. Mr Al-Matin provided Miss Ali with confirmation that this transfer was made to him by Miss Ali's late father, who had informed him that the money would come from Miss Ali's
20 account. Mr Al-Matin also confirmed that 'the sum in total was given back in August 2006'.

26. Although the receipts of £17,700 do not match exactly the remittance of £18,000, we accept this explanation. Mr Al-Matin was acting as an intermediary between the late Mr Ali and a cousin of his who was resident in Iraq and who required assistance.
25 We accept that Miss Ali made her bank account available to her late father to assist in this arrangement. The remittance of £18,000 was in the nature of an advance to the persons benefiting in Iraq and the receipts of £17,700 were in the nature of repayments of the advance.

27. On this basis we are satisfied that the credits of £17,700 to Miss Ali's bank
30 account did not represent undeclared taxable income and we reduce the amendment to her self-assessment to nil.

The decided cases relied on by the Commissioners

28. Mr Williams drew to our attention the following decided cases: *Woodrow v Whalley* 42 TC 249 (1964), a decision of Buckley J; *Johnson v Scott* [1978] STC 48, a
35 decision of Walton J; *Duffy v HMRC* (2007) a decision of Special Commissioners Avery Jones and Huddleston; and *Jonas v Bamford* 51 TC 1, another decision of Walton J.

29. In *Woodrow v Whalley*, the General Commissioners concluded that certain unexplained credits were credits that ought to have been included as profits of his
40 business and the Judge held that the view which the Commissioners took was one which it was open to them to take and could not therefore be disturbed.

30. In *Johnson v Scott*, the Judge held that the Crown cannot do anything else but draw reasonable inferences when the true facts are known, if known at all, only by the

taxpayer. A decision by General Commissioners confirming an assessment based on reasonable inferences drawn by the Revenue could not be impugned on the basis that there was no evidence to support it. (It is relevant to note in connection with this case that Mr Williams freely conceded that the method of calculation of allegedly undeclared taxable income in this case ‘could have been better’.)

31. In *Duffy v HMRC* (a case where Mr Williams represented the Commissioners) the Special Commissioners held, on the facts of that case, that the taxpayer’s explanation of credits to his account (re-cycling of funds) was unpersuasive and that the Commissioners’ explanation, that they represented taxable income, was more probable.

32. In *Jonas v Bamford*, the Judge held that the taxpayer had failed to discharge the onus on him of showing that the additional assessments were wrong.

33. Mr Williams submitted that the question in this appeal was whether we accept or not the explanations given by Miss Ali as to the nature of the various deposits in her bank accounts. If there remains uncertainty in our minds then it follows that she has not discharged the burden of proof upon her. We accept these submissions on the law.

34. However, we have had the benefit of seeing Miss Ali and hearing her evidence. She struck us as a truthful and careful witness. We have also had the benefit of the extensive explanations of the entries in Miss Ali’s bank statements, which have been provided by Mr Ali. We are also satisfied that in the community of which Miss Ali is part, there is often ‘communal use’ of bank accounts by members of a family, even an extended family and that this occurred in connection with Miss Ali’s bank accounts. In particular, we accept Miss Ali’s evidence that the funds in her bank account from time to time were available to her father to use as he wished.

35. We therefore allow Miss Ali’s appeal because we are satisfied on the balance of probabilities that the various deposits in her bank accounts do not represent undeclared taxable income.

36. 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.

JOHN WALTERS QC

TRIBUNAL JUDGE

RELEASE DATE: 24 April 2012