



TC02322

Appeal number: TC/2010/07958

INCOME TAX – discovery assessments – failure to return income on tax return – whether assessments made by HMRC were to best judgment – burden of proof on taxpayer – appeal allowed in part only – s29 Taxes Management Act 1970

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AYYAZ TABISH AHMAD

Appellant

- and -

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

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER
ELIZABETH BRIDGE**

Sitting in public at Bedford Square on 23 January 2012 and 20 June 2012

Mr J Panesar of Panesar & Co for the Appellant

Mrs EM Gardiner an officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr Ahmad against "discovery" assessments made by HMRC as follows:

Tax Year	Amount
2003/4	£5660.30
2004/5	£5614.10
2005/6	£6080.70
2006/7	£6031.50
2007/8	£7304.90

2. Mr Ahmad was represented by Mr Panesar, and HMRC were represented by Mrs EM Gardiner. We heard evidence from Mr Ahmad and from Miss K Neylan, the HMRC officer responsible for making the discovery assessments. In addition a bundle of documents was produced in evidence.

3. The hearing of this appeal commenced on 23 January 2012, but insufficient time had been allocated to complete the hearing on that date. Following the examination in chief of Mr Ahmad, we therefore adjourned the hearing. We gave directions that if Mr Ahmad wished to rely upon payments or borrowings being made through any account (including, but not limited to, his Capital One and American Express credit card accounts), then all bank or credit card statements for such accounts (to the extent not already disclosed) must be provided to HMRC prior to the adjourned hearing date, and two bundles of copies of such statements must be made available for the use of the Tribunal at the hearing of the appeal. At the commencement of the adjourned hearing, we were told by Mr Panesar that a copy of the bank statements that we had directed to be provided had been delivered to the hearing centre at Bedford Square shortly after the directions were issued, but copies had not been sent to HMRC. Our clerk was unable to trace any copies of such statements having been delivered to the hearing centre, and neither Mr Panesar nor Mr Ahmad could produce a copy of the covering letter evidencing postage or delivery of the statements, nor had they brought copies of the statements to the hearing. In the circumstances we directed that we would not take account of any oral evidence that payments had been made through bank or credit card accounts save to the extent that the statements showing such payments had previously been disclosed to HMRC and were included in the hearing bundles.

4. The issues before us were whether Mr Ahmad was in receipt of income from self-employment, whether he was in receipt of rental income, and whether the

discovery assessment raised by HMRC reflected the income he had earned in each of the years assessed. The burden of proof is on Mr Ahmad to displace the tax assessments.

Background facts

5 5. The following facts were not in dispute:

(1) For each of the relevant years, Mr Ahmad did not declare on his tax returns any income from self-employment or any rental income;

(2) On 13 May 2009, HMRC wrote to Mr Ahmad saying that they believed that he was in receipt of income that he had not declared.

10 (3) Following this letter, Mr Ahmad registered his self-employment in respect of a take-away food business.

(4) During the period of HMRC's enquiry into his tax affairs, HMRC asked Mr Ahmad on many occasions to provide relevant information. Mr Ahmad did not provide any of the information requested.

15 6. In the absence of the information requested by HMRC, on 12 October 2009 discovery assessments were made under s29 Taxes Management Act 1970 ("TMA 1970") for each of the tax years 2004/5, 2005/6, 2006/7 and 2007/8. The assessments were raised on income from self-employment and income from UK land and property, and were made on the basis of information available to HMRC and best judgment.
20 The assessment was calculated by Miss Neylan on the basis that Mr Ahmad must have sufficient income to meet his known financial outgoings (as ascertained from an Experian credit report) plus an estimate of his personal private expenditure.

7. Appeals against the assessments were submitted on 13 October 2009. The grounds of the appeal were "as per information attached". The information provided
25 with the appeal were:

(1) details of Mr Ahmad's employment record

(2) letting income for Dallow Road

(3) letting income for 64 Cowley Road

(4) a schedule of properties owned by Mr Ahmad

30 (5) accounts for Mr Ahmad's take-away business.

8. Between 13 October 2009 and 23 July 2010, Mr Ahmad was asked to provide documents to substantiate his income. HMRC concluded their review of the further information provided by Mr Ahmad and his accountant on 23 July 2010. Miss Neylan wrote to Mr Ahmad saying that there were a large number of credits shown in
35 the copy bank statements provided for which no satisfactory explanation had been given, and accordingly she believed that either Mr Ahmad had other sources of undeclared income, or that his income from self-employment and rents was understated. Accordingly she was not able to settle the appeal by agreement. A statutory review was offered, but not accepted.

9. Further documents were provided by Mr Ahmad on 23 August 2010, but these did not run concurrently through the period of HMRC's enquiry, and HMRC therefore did not regard them as sufficient to enable them to settle the dispute.

Rental Income

5 10. At the hearing, the parties acknowledged that Mr Ahmad's income from land and property was no longer in dispute and the agreed amounts of taxable rental income are set out in our conclusions below

Self-employment

10 11. In his evidence, Mr Ahmad stated that he acquired a lease of a takeaway food business in Bedford in April 2006. However it took him time to acquire second-hand catering equipment and to fit-out the premises and he therefore did not start trading until May 2007. The accounts submitted for the business in October 2009 show that the business made a profit of £7518 in the tax year 2007/8.

15 12. Mr Panesar also submitted that Mr Ahmad's declared income (including the state benefits to which he and his family were entitled), were sufficient to meet his outgoings and provide for his day-to-day living expenses.

13. HMRC submit that Mr Ahmad had either understated his income from the Bedford take-away business or has additional undeclared self-employment income (or both).

20 14. We have no hesitation in preferring the submissions of HMRC. Indeed we agree with the comment made by Miss Neylan during the course of her evidence that the amount of self-employment income assessed by her might be understated. Our reasons are as follows.

25 15. The lease for the business premises commenced on 11 April 2006 and provided for an initial premium of £30,000 and then rental payments of £9600 for the first year and £10,800 for the second to fifth years. The rents were payable quarterly in advance. We find it implausible that Mr Ahmad would have delayed starting to trade from the premises for a year, as he would have outgoings on the premises (not least rent). There is no evidence before us which indicates that the business did not start to trade shortly after the lease was signed.

30 16. Mr Ahmad had at least five and possibly six credit card accounts, and had at least two bank accounts. An analysis of such of the Mr Ahmad's bank and credit card statements as were provided to HMRC show a large number of round sum cash and cheque deposits being made into the accounts. Mr Ahmad explained these to us as
35 being payments in respect of loans made between himself and friends. Mr Ahmad both lent money to friends and received loans from them. In addition, Mr Ahmad said that he would withdraw money from one account in order to pay it into another account to meet minimum payment requirements or mortgage payments.

17. We find these explanations to be implausible.

18. As regards deposits into one account being funded by withdrawals from another, we cannot reconcile withdrawals to deposits on the statements included in the bundles before us.

5 19. As regards the loans, we cannot reconcile the amounts apparently lent, to the repayments made. For example, Mr Ahmed lent £65,000 in October 2006 to a friend. This is a substantial amount, and Mr Ahmad had to borrow himself in order to make this loan. Yet there is no correspondence or other documentation with the borrower evidencing the loan in any way. Mr Ahmad kept no accounts or other records showing
10 the amount lent, and the repayments made. For example, in relation to a loan of £65,000 made to a friend, Mr Ahmad was only able to identify entries in his bank statements representing repayments which totalled approximately £55,000, and there was no evidence before us which supported his statement that the deposits identified
15 actually represented payments by the borrower. We find it implausible that Mr Ahmad would take out an expensive loan (on which he himself incurred substantial interest costs) in order to make a large loan to a friend, and then be extraordinarily lax about repayments (keeping no documentation of any kind to record amounts paid and received).

Conclusions

20 20. We find that Mr Ahmad is not a credible witness. His explanations for the cash and cheque deposits into his bank and credit card accounts are implausible and cannot be reconciled to either loans to/by friends, or circulating funds between one account and another.

21. Although Mr Panesar sought to demonstrate that Mr Ahmad had sufficient
25 declared income and benefits to meet his outgoings, this does not demonstrate that Mr Ahmad did not have additional undeclared income in excess of his outgoings.

22. We are satisfied that Miss Neylan made a "discovery" for the purposes of s9
TMA 1970 in that income for each of the relevant years which ought to have been
assessed had not been assessed. We are satisfied also that this is attributable to the
30 negligent conduct of Mr Ahmad in failing to notify HMRC of this income and failing to declare it on a tax return. The conditions for a discovery assessment in s 29 TMA 1970 are therefore satisfied.

23. The burden of proof rests on Mr Ahmad to show that the assessments are excessive, and he has not discharged it.

35 24. We therefore confirm Mr Ahmad's assessable income as follows:

Year	Income	Amount	
2003/4	Self-employment UK land and property	£14,000 Nil	

2004/5	Self-employment UK land and property	£14,000 £6,000	(Cowley Road)
2005/6	Self-employment UK land and property	£15,000 £5,000	(Cowley Road)
2006/7	Self-employment UK land and property Dallow Road loss	£15,000 Nil (£637)	(loss used against 07/08 land and property income)
2007/8	Self-employment UK land and property Dallow Road loss	£18,000 £590 (£1604)	(loss used against 07/08 land and property income)

25. 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.

10

15

**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

RELEASE DATE: 19 October 2012

20