



**TC02588**

**Appeal number: TC 2011/09779**

*INCOME TAX - Assessment – Profits of trade – Taxi driver – Whether sales understated in returns – Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ASIF MEHDVI**

**Appellant**

**- and -**

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

**TRIBUNAL:    SIR STEPHEN OLIVER QC  
                  DUNCAN McBRIDE**

**Sitting in Public in London on 12 February 2013**

**A Salam, certified accountant, of AS Associates, for the Appellant**

**M Chapman of HMRC instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. Mr Asif Mehdvi (“the Appellant”) appeals against an amendment made in a closure notice relating to his return for the year 2008. This increased the taxable profit for the year by £27000 from £13425 to £40425; the result is an increase in the tax shown due in the Appellant’s self-assessment return (of £2192) to £10009.

2. The Appellant also appeals against Revenue Assessments for the years 2006 and 2007. For 2006, the taxable profit was increased by £24792 from £13474 to £38266 resulting in an increase in tax due of £7327. For 2007, the taxable profit was increased by £25914 from £13840 to £38754 resulting in an increase in tax due of £7595.

3. The Appellant attended the hearing and gave evidence.

4. We are satisfied from the evidence that all three appeals must succeed.

### **The Appellant’s Business**

5. The Appellant has at all material times carried on business as a self-employed taxi driver. He owns his own vehicle. He has been a member of a “circuit” which has provided him with hires. He pays a rent to the circuit for its facilities. He operates from Walthamstow in the north-east of London.

6. The hires undertaken by the Appellant have been exclusively to and from London’s airports. With negligible exceptions these have all been one-way trips, either collecting fares from, or dropping them at, the particular airport.

7. The fares charged during the years in question were £21 to Heathrow, £42 to Gatwick, £18 to City Airport and £38 to Stanstead.

8. The Appellant had worked in a hotel before setting up in business as a cab driver in 2002. In the earlier years his business receipts had, he told us, been very small. He became a member of the circuit in 2005. He said that he was available for work every day. Usually, he said, he made two to three runs a day. Once or twice in a week, he told us, he would have received fares amounting in aggregate to £150. He occasionally received tips; because of the state of his vehicle, these rarely exceeded £2.

### **The Assessments and the Amendments to the Self-Assessment**

9. The self-assessment return for 2008 had shown turnover as £41313 and various expenses claimed totalling £25779 leaving a net profit of £15534. The claim for capital allowances amounted to £2109, leaving a taxable profit of £13425 for the year. The 2008 return was the subject of an enquiry. When the enquiry was closed, the amendments summarised in paragraph 1 above were made. The earlier year additions, giving rise to the assessments summarised in paragraph 2 above, were calculated

using the retail price index (“RPI”) applied to the 2008 figures as no records had been kept for those earlier years.

10. The methodology adopted by the Respondents in reaching their figures for 2008 had been by adding cash to bank deposits. That had produced a figure of £46318. To  
5 that sum were added cash expenses. Those expenses consisted of £10974 for petrol, £2575 for car repairs, £6720 for circuit rent, £878 for other expenses and £3081 representing payments to credit card. £5200 (being £100 a week) was shown as “drawings”. Totalling all those amounts up, the Respondents calculated that the Appellant’s turnover for the year had been £75789.

10 11. The reason for adding cash expenses, in calculating turnover, was (we were told by Mr John Wickham, HMIT, who gave evidence) because the Appellant had told an investigating officer that he had paid all expenses out of cash takings before banking them. (That had indicated to the Respondents that the Appellant had claimed his expenses twice. The Respondents had consequently assumed that the Appellant had  
15 deducted expenses from turnover and then deducted them again on his tax return.) The Appellant agreed that the figure for bankings that he had used in determining his turnover had been the figure for cash takings net of expenses; that, he acknowledged, had been wrong.

### **Our Findings**

20 12. The Appellant had not, as we have observed, been able to any records of fares or receipts for expenses. Consequently HMRC were, we think, justified in questioning his return and the present problems are of his making. At the same time, we find the Appellant to be a person of honesty and integrity. He may not, however, have fully understood what he was being asked in the course of the enquiry. He may not have  
25 given clear explanations as to the workings of his business and he may not have understood the implications of his replies to questioning.

13. The issue for us is how much of the cash deposited was from his business and how much came from other sources such as family loans. We were, in this connection, provided with some evidence, albeit uncorroborated, of such other  
30 sources; that evidence had not been provided to HMRC.

14. We are satisfied that the £46361, shown as bankings in the Respondents’ calculations, did not fairly represent deposits of fares less business expenses. There were, we accept, other sources of funds. We cannot say with any accuracy how much came from those other sources. One source was loans from the Appellant’s cousin (or  
35 brother) who was a resident of Switzerland; the Appellant had purchased a house as a home for himself and his family and found he had insufficient resources to pay the interest on the mortgage. We do not accept that the Appellant used cash from his fares to pay for all household expenses, such as groceries; we accept that his wife provided money for these out of child benefits and tax credits.

40 15. The Respondents’ methodology, summarised above, is, we think, unreliable for other reasons. It produces a figure for turnover (£75789 for 2008) that is so far in

excess of what is likely to have been achieved that we have to reject it. The real amount of turnover for the year was, we think, much closer to the £41313 shown on the Appellant's return for the year. To achieve a turnover of £75000 would involve driving day and night for 300 days and taking £250 a day in fares. It could require six  
5 trips to Gatwick Airport or twelve to Heathrow or a mixture of the two. It would call for far greater expenses than were claimed by the Appellant in his 2008 return. (For this purpose we accept the Appellant's evidence as to the fares charged in 2008.)

16. The Appellant's figure for turnover in his 2008 return (£41313) is, we think, sustainable. He was available for work every day; but that does not mean,  
10 realistically, that he was fully occupied driving every day of the year. Assuming he was fully occupied driving for 300 days, he would have had to have earned £140 a day; that would have meant seven runs to Heathrow or nearly four to Gatwick. If anything, that figure seems on the high side.

17. The Appellant's figure for expenses in his 2008 return was £25779. It is not in  
15 dispute that £10974 was spent on petrol, £2575 was spent on car repairs, £880 on other repairs and £6720 on circuit rent. The amount the Appellant has claimed appears to be on the high side.

### **Conclusion**

18. We acknowledge that we have no hard evidence. It seems to us, however, that  
20 the Respondents' method of calculating turnover for the year is so far wrong that it cannot be accepted. It assumes a level of work that defies credibility. Moreover, we find that there were sources of funds, other than fares, that accounted for deposits in the Appellant's bank. The basis on which the Respondents have calculated the Appellant's profits for the year 2008 cannot, in the present circumstances, be relied  
25 upon. The figures for 2006 and 2007, which have been calculated on the same basis as the figures for 2008, subject to adjustments by reference to the RPI, are correspondingly flawed. We accept as reliable the figure for turnover found in the Appellant's return to 2008. We do not have material that would justify the disallowance of any of the expenditure claimed by the Appellant.

30 19. For the reasons given above we allow the appeals as regards all three years.

20. 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  
35 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.

**SIR STEPHEN OLIVER QC  
TRIBUNAL JUDGE**

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**RELEASE DATE: 7 March 2013**