



**TC02798**

**Appeal number: TC/2011/05797**

*INCOME TAX – Self Assessment – Closure Notice under s28A TMA 1970 – whether Appellant’s tax return incorrect – found, yes – whether Appellant had shown that HMRC’s proposed additions to that Self Assessment were not justified – found, yes, in part – appeal allowed in part.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mrs QAISAR JEHAN HALEEM**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE JOHN WALTERS QC  
                  DAVID E WILLIAMS CTA**

**Sitting in public at Bedford Square, London on 11 December 2012**

**Mr M Sarwar, Counsel, instructed by AKA Chartered Accountants, for the  
Appellant**

**Ms R Shields, Officer, HM Revenue and Customs, for the Respondents**

## DECISION

1. Mrs Qaisar Jehan Haleem (“Mrs Haleem”) appeals against a Closure Notice  
5 issued by the Respondents under s28A Taxes Management Act 1970 on 6 December  
2010, stating that Mrs Haleem’s Income Tax Self Assessment for 2006/07 should be  
increased by £42,074, as a result of which additional tax claimed by the Respondents  
 (“HMRC”) was £8,532.88. The grounds on which HMRC contend that such an  
10 increase is justified are set out below, along with the reasons for which, in the course  
of the hearing before us, HMRC reduced the increase for which they contended to  
£30,589. Mrs Haleem contends that no increase is justified and that her Self  
Assessment in the sum of £5,311 should stand good.

### **The background facts**

2. We heard evidence on affirmation from Mrs Haleem, Mr Liaqat Ali Khan (“Mr  
15 Khan”), Chartered Accountant, of AKA Chartered Accountants, and Mrs N Bhatia  
 (“Mrs Bhatia”), Inspector of Taxes.

3. We found each of the witnesses to be a truthful witness as to the relevant facts  
but as might be expected in a case of this type, they differed as to their interpretation  
of certain facts. We discuss these differences further below.

20 4. The following facts were either not in dispute or emerged from the oral  
evidence without being challenged:

(a) Mrs Haleem, who is a widow born in 1949, has for some years been the  
proprietor of a minicab hire business trading in West London under the  
name of “Adams Cars”.

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(b) The business operates from rented premises in Shepherd’s Bush Road,  
London W6. For several years prior to the year in question (2006/07) it  
had operated at a loss. In Mrs Haleem’s words, it was just “surviving”.

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(c) All the drivers who work in the business supply their own vehicles, paying  
all the running costs of those vehicles.

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(d) They collected the fares in cash and were entitled to retain those fares.  
However, they paid a fee to Mrs Haleem which, in the period at issue, was  
normally £90 a week for a full-time driver and £70 for a part time driver,  
although Mrs Haleem might occasionally have agreed to a reduced fee if  
work had been very sparse. This fee was payable in cash to Mrs Haleem  
each Friday. It was a matter for each driver how many hours he/she wished  
to work, on what Mrs Haleem described as an “open shift” system.

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- (e) In the period under appeal there were on average about 12 or 13 drivers involved. No tax or national insurance had been deducted from payments made to them: this was on the advice of Mrs Haleem's former accountants, N Khizar & Co.
- 10
- (f) In return for that fee Mrs Haleem operated a control room which took calls from prospective customers and allocated them to drivers. The control room was open 24 hours a day and was staffed by a rota of controllers. In the period in question Mrs Haleem and her daughters sometimes acted as controllers.
- (g) In addition to the drivers and controllers, a few people were also employed to distribute advertising cards for the business.
- 15
- (h) Mrs Haleem kept a record book in which names and addresses of drivers and the fees paid by them were recorded. Drivers were identified by a number which was used when they were contacted for work, and also recorded in the book, but these were not necessarily consecutive because some drivers would decline a particular number for superstitious reasons. Thus the fact that one driver was number 88, for instance, did not mean that Mrs Haleem had 88 drivers. She did not record names or addresses of drivers who had left in the year.
- 20
- (i) Mrs Haleem jointly with her brother, Mr T Hassan, purchased an investment property at 156 Shepherds Bush Road, London W6 some 20 years ago, which they still own.
- 25
- (j) In the tax year 2006/07 Mrs Haleem purchased five other investment properties, as sole owner. These properties were mainly let to local authority tenants on housing benefits, and rents in respect of those tenants were paid to Mrs Haleem direct by the relevant authorities. The cost of each property (inclusive of costs) together with the mortgage thereon, was as follows:
- 30
- |    |                          |                                 |
|----|--------------------------|---------------------------------|
| 35 | 2 Drakland House W9      | Cost £185,000 Mortgage £135,000 |
|    | 32 Charcraft Court W14   | Cost £213,561 Mortgage £178,000 |
|    | 2C Rockley Court W14     | Cost £275,500 Mortgage £226,000 |
|    | 57 Sulgrave Gardens W6   | Cost £223,500 Mortgage £187,000 |
| 40 | 156 Erskine Road, Sutton | Cost £247,700 Mortgage £207,000 |

- 5 (k) She financed these purchases by “buy to let” mortgages, on an interest-  
only basis, negotiated on her behalf by a mortgage broker with secondary  
lenders, including Platform and Mortgage Express. She was not clear  
whether she had been asked to give evidence of income. Her evidence was  
that she never completed a mortgage application and that she had no idea  
what the mortgage broker did to obtain the mortgage advances concerned.  
The deposits required were financed by two second mortgages totalling  
£300,000 on her private residence. Those loans were paid into a NatWest  
Loan account. She then transferred funds from her NatWest Loan account  
10 to a Lloyds TSB account as required for the deposits and legal fees in  
connection with these purchases.
- 15 (l) Mrs Haleem’s 206/07 Self Assessment tax return was submitted on her  
behalf by Messrs N Khizar & Co, her then accountants.
- (m) The return showed the following entries relevant to this appeal:
- 20 (i) *Minicab business*: Sales/business income £46,370, less employee costs  
£26,000, premises costs £8,633, repairs £603, administrative expenses  
£2,384, advertising costs £2,689 and legal and professional expenses  
£750; these expenses totalled £41,059, leading to a declared net profit of  
£5,311.
- 25 (ii) *Rental income*: Rents and other income £52,559, less expenses £67,988, the  
greater part of the latter being finance charges of £57,363, leading to an  
excess of expenses over income of £15,429
- (n) An enquiry into Mrs Haleem’s 2006/07 tax return was opened by HMRC  
on 16 September 2008.
- 30 (o) Specific information was sought by HMRC as to the minicab business and  
Mrs Haleem’s investment properties. A lengthy exchange of  
correspondence followed between the then acting Inspector for HMRC and  
Messrs N Khizar & Co, in the course of which that Inspector took long-  
term sick leave and was replaced by Mrs Bhatia. Messrs N Khizar & Co  
35 also ceased to act for Mrs Haleem and Mr Khan’s firm took over. These  
changes caused delays which were further lengthened by bereavements  
and illnesses in both Mrs Haleem’s and Mr Khan’s family.
- 40 (p) On 12 October 2010 Mrs Bhatia wrote to Mr Khan informing him that she  
had taken over the enquiry and proposed a meeting with Mrs Haleem at  
which she proposed to cover the nature and conduct of the minicab  
business, record keeping, property purchases and rental income, and  
personal and private expenditure.

5 (q) On 14 October 2010 Mr Khan wrote to HMRC claiming that no reason had been given for continuing the enquiry and asking, under s28A(4) Taxes Management Act 1970, that the enquiry should be closed by the Respondents stating their conclusions in the form of a Closure Notice as provided by *ibid* s28A(1).

10 (r) On 4 November 2010 Mrs Bhatia wrote to Mr Khan setting out what she called “the main concerns I have that will form the basis of any notice of conclusion of this enquiry in the absence of outstanding information, documentation and further clarification that could be addressed at a meeting”. Summarising what followed as far as relevant to this appeal, these “concerns” related to the minicab turnover figure, employee costs, the business records, the amount of the rental income, the amounts deposited into various bank accounts, the level of funds available to finance the apparent shortfall in rental income and Mrs Haleem’s private expenditure, and a statement of all assets and liabilities.

15 (s) After a further request by Mr Khan to close the enquiry, Mrs Bhatia on 6 December 2010 issued to Mrs Haleem a formal Closure Notice, accompanied by a letter summarising the correspondence to date and concluding as follows:

25 “Based on the limited information available to me my conclusion is that in the absence of all of your records for the year ending 5 April 2007 and satisfactory explanations to my concerns I cannot check whether an accurate account of your income and expenses for that year has been made. I am increasing your self assessment for 2007 [sic] to reflect the concerns mentioned above and amounts calculated as shown on the attached schedule [these calculations are set out later in this decision]:

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Profit returned year ending 5 April 2007	£5,311
Add:	
Funds required to finance rental loss	10,914
Excess Banking	21,160
35 Funds for personal expenses	<u>10,000</u>
Revised net profit	47,385”

40 The formal Closure Notice set out the revised tax payable by Mrs Haleem as a result of these adjustments, which sought to add £42,074 to the declared taxable profits, as £8,532.88.

(t) Mr Khan on behalf of Mrs Haleem immediately appealed against the Closure Notice. Later he supported the appeal with various calculations which we describe further below and which he claims, in the formal

Notice of Appeal, “clearly show that the calculations of HMRC are flawed, unfair and unjust”.

### HMRC’s calculations

5 5. It will be convenient if we next set out the basis of Mrs Bhatia’s proposals in her letter of 6 December 2010, since these formed the starting point of the contentions advanced at the hearing before us. What follows is derived from the relevant correspondence in the bundle before us and from Mrs Haleem and Mrs Bhatia’s own evidence. We deal with each of the three elements in the proposals separately.

10 *“Rental income loss”*

6. The declared rental income of £52,559 was derived from the following properties let during the tax year:

Property address	Cost £	Rent received 2006/7	Interest	Other expenses	Total expenses
156 Shepherds Bush Road	250,000	17,060	20,048.38	3,582.99	23,631.37
156 Erskine Road	247,700	10,000	12,290	3,639.87	15,929.87
2 Drakland House	185,000	8,320	5,985.3		5,985.3
32 Charcraft Court	213,561	6,546	7,035.48	718.6	7,754.08
2C Rockley Court	275,500	4,458	7,555	1,553.5	9,108.5
57 Sulgrave Gardens	223,500	6,175	4,447.65	1,775.05	6,222.7
<b>Totals</b>		<b>52,559</b>	<b>57,361.81</b>	<b>11,270.01</b>	<b>68,631.82</b>

15 (N.B. The total expenses shown above differs slightly from the entry on the tax return (£67,988) but nothing is thought to turn on this).

7. Mrs Bhatia queried how what she described as the “rental income loss” of £15,429 (being rents received £52,559 less expenses according to the return £67,988) was financed by Mrs Haleem. All the properties apart from 156 Shepherds Bush Road had been acquired in 2006/07. Details had been submitted in the enquiry of the loans  
20 taken out to finance these purchases and of the amounts required for deposits and fees to complete four of the purchases, although no information was available for 156 Erskine Road. Mrs Bhatia compared the total paid in deposits and fees for the four other properties, £175,519, with the lodgements identified in Mrs Haleem’s Lloyds TSB account (number 1460160) which, according to her accountants, had been made  
25 from the second mortgages referred to above in connection with the relevant purchases. These totalled £180,034. She thus derived what she described as “excess funds”-i.e. an excess of Lloyds TSB lodgements over deposits and fees –of £4,515. She set that “excess” against the “rental income loss” of £15,429, and described the difference, £10,914, in her letter of 6 December 2010, as “Funds required to finance  
30 rental loss” £10,914 which formed the first element of her proposed adjustments to Mrs Haleem’s return.

*“Excess banking”*

8. Mrs Bhatia next sought to compare lodgements in Mrs Haleem’s bank accounts with known non-business incomings. After deducting such identified non-business incomings this produced a total of £83,456 unexplained lodgements. She then compared this total with what she described as *“Funds available for banking”*, by which she meant monies derived from the minicab and rental activities which could have been banked in those accounts.

9. On the minicab side she started with the gross takings of £46,370 less “cash expenses” – being payments to employees, premises expenses of £8,633 and advertising expenses of £2,000, which leaves £9,737 as what she regarded as the “bankable” proceeds of the business. She assumed that the other minicab expenses were paid by cheque or credit card.

10. On the rental side, Mrs Bhatia simply took into account the gross rents receivable, ignoring the expenses, even though not all the rental income may have been banked. So, to this extent, as Ms Shields submitted, Mrs Bhatia had given Mrs Haleem ‘the benefit of the doubt’. This gave “bankable” proceeds of £52,559.

11. She was endeavouring by this exercise to compute the amount of unexplained lodgements which could not be accounted for as representing rental income or net receipts from the mini cab business.

12. Mrs Bhatia’s calculation was then as follows:

Total unexplained lodgements	(per 8 above)	£83,456
Less: minicab proceeds	(per 9 above)	£9,737
rental proceeds	(per 10 above)	<u>52,559</u>
Excess		62,296
		£21,160

13. Mrs Bhatia described the above sum of £21,160, perhaps not very helpfully, as “Excess banking”, although in fact it would be more properly described as amounts banked which could not be explained as representing known sources of income or known non-business receipts, and as such it formed the second element in the proposals in her letter of 6 December 2010.

*“Funds for personal expenses”*

14. In her enquiry Mrs Bhatia claimed that she had not found evidence of money being withdrawn from Mrs Haleem’s accounts for household or personal expenditure. She therefore took the National Family Spending Survey of average weekly household expenditure based on an individual aged between 50 and 65, which she claimed showed average weekly expenditure of £198.30 per person, and, rounding this down to £10,000 per annum, assumed that Mrs Haleem must have had additional income with which to fund this assumed expenditure of £10,000. This accordingly became the third element in the proposals in her letter of 6 December 2010.

**Arguments for the Appellant**

15. Mr Sarwar, on behalf of Mrs Haleem, submitted that Mrs Bhatia’s calculations were methodologically flawed and failed to take account of all the information in her

hands at the time of her letter of 6 December 2010. He relied heavily on the evidence of Mr Khan and on various calculations prepared by Mr Khan which formed part of his witness statement.

5 16. Mr Khan in his oral evidence amplified the thinking behind these calculations as follows.

17. First, Mr Khan argued that Mrs Bhatia had “double counted” the rental income of £ 52,559: first in arriving at the alleged “rental income loss”, and then again in arriving at the so-called “excess banking”. Mr Sarwar argued that this substantially undermined the validity of the calculations.

10 18. Secondly, Mr Khan said that Mrs Bhatia had overlooked some of the amounts banked in Mrs Haleem’s accounts and also some of the non-business bankings, although these were visible, as he claimed, on the bank statements he had submitted. In summary he claimed that instead of £83,456 of otherwise unexplained bankings (as per 8 above), the correct total should be £79,100.

15 19. Thirdly, Mr Khan argued that Mrs Bhatia was inconsistent in her treatment of the expenses of the rental activities as compared with those of the minicab business: she had taken into account the gross rental income in her calculations of “excess banking”, whereas she had taken the minicab income as reduced by some (but not all) of the related expenses.

20 20. Fourthly, he argued that there was no evidence to support the assumed £10,000 for “Funds for personal expenses”, and that this assumption ignored certain round sums drawn from the bank accounts which financed Mrs Haleem’s personal spending.

21. Mr Khan drew these arguments together by re-working Mrs Bhatia’s calculations but substituting –

25 (a) what he believed were the correct amounts of cash lodgements into her accounts: and

(b) the gross receipts both of the rental and minicab activities, and against them set the known expenses of those activities.

30 22. His conclusions were contained in a schedule headed “Cash control account after known corrections” which formed part of the appellant’s bundle. In summary, this reads as follows:

	DR	CR
Transfers from Lloyds TSB accounts	183864	
Deposits/fees etc required to buy properties		175519
Rents received per return	52559	
Rental expenses per return		67988
Rental expenses met from bank accounts	84987	
Cash drawn from bank accounts	20900	
Total deposits in bank accounts		189608
Total known non-business lodgements in accounts	105497	
Minicab receipts per return	46370	
Minicab expenses per return		41059
Minicab expenses met from bank accounts	832	
Cash for personal expenses		10000
Cash surplus		10835
	=====	
	495009	495009

23. Mr Khan said in his oral evidence that this presentation was an attempt to test Mrs Bhatia's assumptions by taking HMRC's figures for alleged "Funds for personal expenses" – the £10,000 shown on the credit side above-but taking what he believed to be the corrected numbers for bank lodgements and non-business incomings, but also taking into account both income and expenditure from both the rental and minicab activities. He also observed that his schedule eliminated the "double counting" of rental receipts. Presented on what he regarded as the correct basis, this avoided the flaws in HMRC's approach and brought out a cash surplus rather than a deficiency as alleged by HMRC.

24. Mr Sarwar submitted that Mrs Haleem had relied on advice from her previous accountants to the effect that she did not need to operate PAYE on drivers' remuneration. He argued that as a lay person this was a reasonable thing for her to do.

25. Mr Sarwar accepted that Mrs Haleem had acquired substantial properties in the period but said that these were acquired on "Buy to let" mortgages where the lender's main concern was with the rental cover. Most of the tenants were paid for by local authorities and this may have been seen by lenders as a low-risk application. It was notorious that in the period leading up to the banking crash of 2008, lenders had cast their previous caution aside and the ready availability of such loans did not imply that Mrs Haleem had additional sources of income.

26. Relying on Mr Khan's evidence, Mr Sarwar submitted that HMRC had not established that Mrs Haleem's return was incorrect and that her self assessment of £5,313 should be accepted.

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### **Arguments for HMRC**

27. Ms Shields, for the Respondents, argued that very limited records had been produced by Mrs Haleem's accountants in response to HMRC's queries over a long period.

5 28. She drew attention to a schedule attached to Mrs Bhatia's letter of 6 December 2010 which set out at length the business records and other requested material which had not been produced: these included receipts for cash expenditure, purchase invoices, details of premises costs and other expenses, cheque book counterfoils and paying-in slips and a completed statement of assets and liabilities.

10 29. She also referred to the book in which Mrs Haleem had said that she recorded the details of the minicab drivers and the amounts paid to them. Certain drivers were identified only by number rather than by names and addresses. In her evidence, Mrs Haleem had said that she only recorded the names and addresses of those who were still working at the end of the year and not of those who had left by the year-end. This  
15 indicated a weakness in one of the prime records of the minicab business.

30. Nevertheless, in Ms Shields' submission, Mrs Bhatia had been prepared to accept the figure of £26,000 for payments to employees despite the absence of PAYE records, in the interests of bringing the enquiry to a close.

20 31. Turning to the adjustments in the Closure Notice, Ms Shields argued that in her calculations, Mrs Bhatia had made two concessions that were in Mrs Haleem's favour:

(a) In the absence of the relevant information, she had ignored the amount of deposit and fees required in respect of the Erskine Road property, which amounts if included would have eliminated the excess of bank lodgements  
25 over funds required for deposits and fees, leaving the whole of the "rental income loss" unfunded and increasing the adjustment to take account of the 'rental income loss' to £15,429; and

(b) In her "Excess Banking" calculations, she had indeed (as argued by Mr Sarwar on the basis of Mr Khan's evidence) given credit for the full  
30 amount of the rental income, £52,559, but only for that part of the minicab income that exceeded the expenses likely to have been paid in cash (£9,737). This had been done in view of the likelihood that the rents received had been direct bank credits from local authorities, but this had  
35 not been demonstrated and might not be wholly correct. But to the extent that it was not correct, the deficiency of known sources of funds, compared with known bankings, would be increased, in turn increasing the adjustment required for "Excess Banking" in Mrs Bhatia's letter of 6  
40 December 2010.

32. With regard to the alleged double counting of the rental receipts, Ms Shields submitted that the two calculations in which they appeared were aimed at different points. It was obviously relevant to ask, both how Mrs Haleem had managed to fund a shortfall of rental receipts to expenses, and also how she explained the apparent fact that her bank lodgements exceeded the known incomings for the year. This was not double counting but two different illustrations of the likely errors in her return.

33. Ms Shields drew attention to the mortgage applications made on Mrs Haleem's behalf in respect of the five properties purchased in the period. These properties had cost a total of nearly £1.4 million, and she had taken out mortgages totalling £933,000. This suggested that she must have had further income resources available to her to support such large borrowings. In addition the precise source of the deposit for Erskine Road (some £38,000) had still not been demonstrated.

34. Ms Shields argued that the burden of proof was on Mrs Haleem to displace the adjustments to her self assessment and that she had failed to do so, so that those adjustments should stand, subject to one matter which we mention below.

35. In the course of the hearing, Ms Shields after discussion with Mr Sarwar accepted that a family loan of £10,000 had been overlooked in estimating Mrs Haleem's other available resources. She also agreed to accept that further assistance had been forthcoming in the period from Mrs Haleem's mother and sister. Ms Shields thus conceded that in the "Excess Banking" calculation the final figure should be reduced to take account of these and other minor matters from £21,160 to £9,675. The total adjustment thus reduced from £42,074 to £30,589.

#### **Discussion and conclusions**

36. We agree with HMRC that the onus is on Mrs Haleem to displace the adjustments to her self assessment by evidence, and that if, or to the extent that, she cannot do so, the adjustments must stand good – see: *inter alia*, *Nicholson v Morris* 51 TC 95 at 110. Against that background we ask ourselves whether she has done so.

37. It seems clear that the Respondents' enquiry in this matter was chiefly carried on by Mrs Bhatia's predecessor, who asked for significant amounts of information which, for reasons that need not concern us, was not provided. Mrs Bhatia, on taking over the conduct of this case in October 2010, was mainly concerned, reasonably enough in our view, to bring to a conclusion an enquiry that was already over two years old and in which no progress had been made. Her proposals therefore made several substantial concessions to Mrs Haleem, and a further substantial concession was made by Ms Shields in the course of the hearing before us.

38. We agree with HMRC that insufficient information was supplied to them to be able to accept that Mrs Haleem's minicab business had made as small a profit as £5,311, or that her expenses had exceeded her rental income, in the year in question. We base this view on two points:

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(a) The prime records of the minicab business, in so far as they were produced, consisted of a book merely showing payments received from drivers, some of whom were unnamed, with no receipts from the drivers, and no receipts for business expenses were produced; and

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(b) On the rental side, although we acknowledge the possibility, as argued by Mr Sarwar, that the lenders who lent Mrs Haleem not far short of £1 million in the year may have acted irresponsibly, the fact remains that on her own evidence she had a business operating at a loss in the immediate past and no other known source of income. Even on the basis of rental cover, the interest charged on the loans in the year in question exceeded the rents (paragraph 6 above refers). We find it difficult to accept that commercial lenders even at the time in question would be quite so generous.

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15 39. HMRC were thus in our view entitled to be dissatisfied with the return. The question for us, therefore, is whether (or to what extent) Mrs Haleem has shown that their proposed additions are not justifiable.

40. We have considered carefully the objections advanced by Mr Sarwar to the methodology adopted by Mrs Bhatia. They are largely if not completely based on the evidence of Mr Khan. Although we found Mr Khan a truthful witness who had clearly devoted much time to demonstrating that Mrs Bhatia's calculations were unsound, we came to the conclusion that he and Mrs Bhatia were approaching the problem from different directions.

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41. Mr Khan's method of testing Mrs Bhatia's conclusions, summarised above, was to prepare a control account. On the credit side he entered the known outgoings by cash or cheque, such as the deposits and fees required for property purchases, and the expenses of the minicab and rental activities; and also dealt with the uses to which cash might be put, such as the known lodgements in the various accounts. He also met the Respondents' argument to the extent of entering Mrs Bhatia's own assumed private expenditure figure of £10,000. On the debit side he put the sources from which such demands on resources might be met, such as known transfers from other accounts, the receipts of the minicab and rental activities, and known sources of cash such as drawings on cash cards and cheques drawn to cash. His workings produced a cash surplus of £10,835.

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42. This method, as Mr Khan observed, avoids double counting of the rental receipts. As far as it goes it suggests that Mrs Haleem's returned income was enough to fund her private spending, as assumed by Mrs Bhatia, with £10,835 to spare. However, it is obvious that for every pound by which £10,000 understates Mrs Haleem's private expenditure, Mr Khan's surplus is reduced by a pound. If her private expenditure – as to the amount of which we heard no independent evidence – was £25,000 rather than £10,000, there would be a cash deficiency of £4,165 instead of a surplus of £10,835. Furthermore, that apparent surplus could, in whole or part,

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represent unrecorded business expenditure rather than amounts available for spending. Finally, opening and closing bank account balances and cash in hand have not been taken into account and could significantly alter the picture.

5 43. For these reasons, and especially in the absence of any independent evidence of Mrs Haleem's private lifestyle and expenditure, Mr Khan's calculations cannot be regarded as conclusive. We observe that the issue of private expenditure was one of the items listed in Mrs Bhatia's schedule of matters of concern that had not been addressed. If a full enquiry, truthfully answered, into this subject had been possible, Mr Khan's method of testing the accuracy of the returned figures might have been  
10 conclusive, but Mrs Haleem, for whatever reason, chose not to respond to those approaches.

15 44. We have also considered Mrs Bhatia's calculations. We should repeat here that she and Mr Khan have been approaching the issue from different directions. Mrs Bhatia, as she accepted when asked by the Tribunal at the conclusion of her evidence, actually used three somewhat different approaches to the same problem-different from each other, that is, as well as different from Mr Khan's:

20 (a) The first approach was to observe that the rental income was less than the related expenditure and ask how this was "funded". She accepted the information given by Mrs Haleem's accountants about how the property purchases, as far as not covered by the mortgages taken out for each purchase, were funded, i.e. that deposits and legal fees (call that A) were met from the second mortgages taken by Mrs Haleem on her own home, released from her loan account into her current account as each purchase was made (call that B). She found that B slightly exceeded A by some  
25 £4,500, and set that excess against the rental "deficit" of £15, 429. That left an unfunded deficit of some £10,900 which she regarded as additional income.

30 (b) The second approach was to compare known bank lodgements (call these C) with known non-business incomings (D), and then compare the excess of C over D (E) with the known "bankable" business income from the minicab and rental activities (F), which produced an excess of E over F, originally computed at £21,160 but reduced after the concessions made at the hearing to £9,675.

35 (c) The third approach was simply to assume expenditure of £10,000 on private living expenses which was assumed not to be covered by known income.

40 45. In our view each of these approaches has some substance to it, although each is open to criticism. The first approach may be regarded as too mechanical, inasmuch as it compartmentalises rental income and the costs of acquiring rented property and

assumes that the latter must always be funded from the former. In reality a taxpayer may regard all their available resources as a single pot, and might, especially with a sympathetic bank, be prepared to run one activity at a loss for a time if there is a reasonable prospect of a surplus in the near term. The second approach, as the concession made by Ms Shields at the hearing illustrates, relies on being able to identify the correct amount of non-business incomings. The third approach is simply a stab in the dark in the absence of any reliable figures of actual expenditure, even though it is derived from statistics of spending by a person of Mrs Haleem's age.

46. All three approaches were in our view justifiable attempts to test the accuracy of the return which would not have been necessary given a reasonable response by the taxpayer and her advisers to the original queries. But the strongest objection in our view is that they must inevitably overlap. The three deficiencies produced by Mrs Bhatia's calculations of £10,914, £21,160 (now reduced to £9,675) and £10,000 cannot simply be added together to produce an "overall" deficiency, assumed to be taxable income in the absence of contrary evidence. They are three different ways of trying to answer the same question—was Mrs Haleem's declared income sufficient, taken together with other verified resources, enough to meet her known expenditures and a reasonable estimate of her private living expenses? The assumed extra income needed to finance the "rental income loss" would not be separate and distinct from the assumed extra income needed to make good a shortfall of bankings over funds available to be banked, or to fund an assumed level of private living expenses. The truth must lie somewhere between the three results.

47. That there is something wrong with Mrs Haleem's 2006/07 return is in our view more likely than not. We reach that conclusion bearing in mind:

- (a) The unreliability of the records of the minicab business;
- (b) The apparent ability of this business to continue despite a history of losses before the year in question; and
- (c) The very substantial borrowings which were taken on by somebody who appears to have few other resources, and whose interest payments clearly exceeded the rents available to her so that even in "Buy to let" terms her letting activities were running at a loss.

48. For the reasons given earlier we cannot entirely accept Mrs Bhatia's figures nor are we convinced by Mr Khan's calculations, in the absence of verifiable expenditure figures. In trying to find a justifiable answer to the question we have taken into account the degree of overlap between Mrs Bhatia's three approaches, Mrs Haleem's age and health problems (making it less likely that her business is vastly more profitable than the returns show and also less likely that she has an extravagant lifestyle) and the likelihood that she may have had some further financial assistance from her family. It is impossible to be precise in such an exercise but taking all these factors into account, we have decided to substitute for the Respondent's proposed

addition (after the concession made at the hearing) of £30,589, an addition of £25,000.

5 49. Mr Sarwar also made various criticisms by his client of the conduct of HMRC during the enquiry, including reference to official complaints which had been dealt with through the normal channels. Although we noted his remarks, we do not find them relevant to the issue we have to decide in this appeal.

**Summary of findings**

10 50. For the reasons already given, we allow the appeal to the extent that Mrs Haleem's self assessment for 2006/07 will be increased by only £25,000 rather than the full £42,074 included in the Closure Notice dated 6 December 2010.

15 51. 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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**JOHN WALTERS QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 22 July 2013**

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