



TC03218

Appeal number: TC/2012/01089

Income tax – amendments to Appellant’s self-assessments for 2005-06 and 2006-07 – no business records supplied to support the figures in the Appellant’s original returns – significant extra deposits in bank accounts controlled by the Appellant explained as sale proceeds of motor vehicles “done up” by the Appellant as a hobby and not as a trade – amendments proposed by HMRC (as reduced at the hearing) not arbitrary or capricious, being based on the amounts of the deposits – Appellant had not discharged the burden of showing the amendments were wrong – amendments (as so reduced) therefore upheld – associated penalties reduced because of extra 10% mitigation for “size and gravity” arising from downward adjustment to the amendments proposed by HMRC at the hearing, but increased by 5% by Tribunal on grounds of lack of co-operation, net 5% reduction in applicable rate – appeal determined in principle on this basis, liberty to apply if necessary to determine final figures

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICKY EVANS

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE KEVIN POOLE
CHRISTINE OWEN FCA**

Sitting in public at Prestatyn Magistrates’ Court on 15 October 2013

Phil Jones, Presenting Officer of HM Revenue and Customs, for the Respondents

The Appellant did not appear and was not represented

DECISION

Introduction

1. This appeal concerns amendments to the Appellant's self-assessment tax returns for the years 2005-06 and 2006-07 and associated penalties.

2. The Appellant failed to attend the hearing of his appeal but the Tribunal was satisfied that he was aware of the date and place of the hearing and that it was in the interests of justice to proceed with the hearing. Attempts to contact him by telephone on the morning of the hearing to ascertain his whereabouts and intentions did not succeed.

3. The Appellant had applied on 8 October 2013 for a postponement of the hearing listed for 15 October, on the basis that he had only received that day a 16 page witness statement of the HMRC officer involved in the investigation (Officer Roberts). The application was refused, on the basis that the witness statement had been voluntarily supplied by HMRC (no direction for its delivery had been made) and it did little more than set out in chronological sequence the history of the enquiry – matters with which the Appellant should already be well familiar. The Appellant was informed of this refusal by telephone on 11 October 2013.

4. A summary decision was issued on 21 October 2013 following the hearing. By two copies of the same letter dated 4 November 2013 (one received at the Tribunal on 5 November and one received on 11 November), the Appellant acknowledged receipt of the summary decision, expressed disappointment that the hearing had taken place in his absence and requested full findings of fact and reasons for the decision, with a view to making an application for permission to appeal to the Upper Tribunal. These are the full findings and reasons requested by the Appellant.

The facts

5. HMRC opened enquiries into the Appellant's self-assessment tax return for the year 2005-06 (in January 2008), and into his return for the year 2006-07 (in January 2009). The Appellant had returned £6,582 turnover and £4,410 profit for 2005-06 and £9,469 turnover and £6,638 profit for 2006-07. He declared the nature of his business on his returns as "handyman".

6. The Appellant provided no proper business records (indeed, he claimed that no such records existed) and no satisfactory explanation of cash deposits into two bank accounts for which some (but not all) statements were supplied by him.

7. The Appellant maintained that, in general terms, the deposits could be explained by reference to what he described as his "hobby" of buying, refurbishing and selling motor vehicles.

8. In the absence of any records or proper explanation of any of his business activities, HMRC eventually issued closure notices in respect of the two outstanding

years on 28 July 2011, pursuant to a direction to that effect made by the Tribunal on the application of the Appellant.

9. The increases they made (and the reasons for them) were as follows.

10. They increased the Appellant's taxable income for the year 2005-06 by £47,623. This was calculated as follows:

Unexplained deposits to bank account 1	£31,465
Unexplained deposits to bank account 2	£7,740
Estimate of unexplained deposits to other bank accounts	£15,000
Total actual and estimated unexplained deposits	£54,205
Less declared business turnover	- £6,582
Increase to declared turnover and profit	£47,623

11. They increased the Appellant's taxable income for the year 2006-07 by £79,531. This was calculated as follows:

Estimated unexplained deposits to bank account 1 (actual unexplained deposits for first month totalled £5,620)	£31,500
Estimated unexplained deposits to bank account 2 (based on previous year, no statements supplied)	£7,500
Estimate of unexplained deposits to other bank accounts	£50,000
Total actual and estimated unexplained deposits	£89,000
Less declared business turnover	- £9,469
Increase to declared turnover and profit	£79,531

12. In relation to both years, they did not consider it appropriate to include credit for any amounts in respect of assumed expenses/cost of sales, in the absence of the production of any other bank statements. They considered that the failure to produce bank statements for any other bank accounts indicated the likelihood that even if those statements reflected expenditure which should be treated as expenses/cost of sales, they would be likely also to disclose further undeclared income. Alternatively, even if purchases/expenses were paid for in cash, it was just as likely that there were corresponding undeclared cash takings.

13. To the extent that the payments were received in respect of sales of motor vehicles, they considered the Appellant to be carrying on a trade, the profits of which would also fall within the charge to income tax.

14. They also imposed penalties in respect of the underdeclaration. Starting from the maximum possible penalties of 100% of the tax and NIC underdeclared, they applied abatements of 0% for disclosure, 10% for co-operation and 20% for seriousness, resulting in a net rate of penalties of 70%.

15. The Appellant appealed against the amendments to his returns and against the penalties.

16. At the hearing, HMRC opened by stating that they proposed a reduction in the amounts claimed, by taking out of account the estimated amounts of £15,000 (for 2005-06) and £50,000 (for 2006-07) which they had previously included as presumed undeclared business takings.

5 17. Thus the amendments that they were now seeking to defend at the hearing were as follows:

2005-06. Having originally sought to add £47,623 to the Appellant's declared taxable profit of £4,410, they were now only seeking to add £32,623. This would result in a revised taxable profit of £37,033.

10 2006-07. Having originally sought to add £79,531 to the Appellant's declared taxable profit of £6,638, they were now only seeking to add £29,531. This would result in a revised taxable profit of £36,169.

15 18. In view of the reduction to the amounts claimed, they also felt it appropriate to increase the penalty abatement for "seriousness", allowing a 30% abatement rather than the 20% abatement originally given. They proposed no change to the abatements previously given for "disclosure" (nil) and "co-operation" (10%). Thus in principle they were proposing to recalculate the penalties at the rate of 60% (rather than 70%) of the total tax and NIC underdeclared for the two years.

Discussion and decision

20 19. In the absence of any evidence from the Appellant (either produced to HMRC during the long course of their enquiries, or produced to the Tribunal at or before the hearing) we were satisfied that even if his explanation as to the source of the various deposits were accepted, his activities in buying, refurbishing and selling vehicles undoubtedly amounted to a taxable trade. If there was such a trade, the evidence of it was extremely sketchy and the Appellant had deliberately avoided providing full information which might have shown the source of funds for any such purchases, but which might also have shown other unexplained receipts. Alternatively, the payments received could just as easily have been attributable to undeclared earnings from his handyman trade.

30 20. We are satisfied that the modified amendments proposed by HMRC at the hearing are not capricious or wholly without foundation, based as they are on reasonable inferences from the sketchy information actually supplied by the Appellant. It is therefore clear that the burden lies on the Appellant to satisfy the Tribunal that the amendments proposed by HMRC to his self-assessments are wrong, and in the absence of any evidence from him, he has failed to discharge that burden. HMRC are therefore entitled to have the appeal against the amendments dismissed.

40 21. As to the penalties, we accept HMRC's proposal that, in view of the reduced size of the amendments they propose, the abatement for "seriousness" should be increased from 20% to 30%, with a corresponding reduction in the penalty. However, we also feel that in the light of the Appellant's conduct throughout the enquiry, their abatement of 10% for co-operation is over-generous and we consider it should be

reduced to 5%. We therefore confirm the penalties in the reduced amount of 65% of the total underdeclared income tax and NIC for the two years.

5 22. We therefore confirm HMRC's amendments to the Appellant's self-assessments as set out at [17] above and we set the penalties at the level of 65% of the tax and NIC attributable to the Appellant's underdeclarations. We determine the appeal in principle on this basis.

23. Either party has liberty to apply to the Tribunal for a final determination of the tax, NIC and penalty liability for the two years in question if they are not agreed on the basis of this decision in principle.

10 24. 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
15 "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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**KEVIN POOLE
TRIBUNAL JUDGE**

RELEASE DATE: 13 January 2014