



**TC03561**

**Appeal number: TC/2013/04518**

*INCOME TAX – relief for losses – whether taxpayer conducting a self-employed occupation as a reinsurance and business consultant – whether expenditure incurred wholly and exclusively for the purposes of that occupation – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR JANAK SHAH**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MALCOLM GAMMIE CBE QC  
MISS SANDI O'NEILL**

**Sitting in public at Bedford Square, London WC1 on 9 January 2014**

**The Appellant appeared in person**

**Mrs Nadine Newham, presenting Officer, for the Respondents**

## DECISION

### Introduction

- 5 1. This is an appeal by Mr Janak Shah against assessments for the years 2008-09 and  
2009-10 and a closure notice in respect of the year 2010-11. The assessments and  
closure notice were issued on 15 January 2013 and appealed by Mr Shah on 24  
January 2013. The tax in dispute for the three years was £3,399.85 but this was  
10 reduced on review to £2,969.90. For each of the years in question Mr Shah's return  
of income included an entry in respect of an occupation as a reinsurance and business  
consultant. In each year he had claimed a loss in respect of that occupation.
- 15 2. In each of the years 2008-09 and 2009-10 the Respondents (HMRC) had allowed  
relief for the losses against Mr Shah's other income. In 2010-11, however, HMRC  
decided to enquire into this aspect of Mr Shah's return and, as a result, had concluded  
that the expenses he had claimed as giving rise to the losses were not allowable.  
HMRC accordingly closed their enquiry by adding back the expenses to leave a small  
profit for the year from Mr Shah's self-employment. HMRC issued assessments for  
the two earlier years to recover the tax that had been underpaid following a  
corresponding adjustment for those years.
- 20 3. Mr Shah appealed and asked that HMRC conduct a review. The reviewing officer  
concluded that Mr Shah was not conducting any trade in the years in question and that  
the expenses claimed had therefore been correctly disallowed. The reviewing officer  
concluded, however, that the related amounts that had been declared as receipts of the  
trade were not chargeable to tax on that basis and accordingly adjusted the Officer's  
25 conclusions, leading to a small variation in the tax payable (see paragraph 1 above).  
It is against the reviewing officer's decision that Mr Shah's appeal proceeds.
- 30 4. Mr Shah, accompanied by his wife, presented his case. His evidence was given in  
the course of submissions with some additional contributions by his wife. We did not  
require either of them to give their evidence under oath. They answered questions  
that were put to them by Mrs Newham for the Respondents and by the Tribunal. We  
had before us the papers relating to HMRC's enquiry and their conclusions and  
review, including Mr Shah's returns for the years in question together with details of  
the income and expenses claimed in respect of his 'self-employment'.
- 35 5. Overall, we gained an impression of what Mr Shah claims as the basis of his self-  
employed occupation and of the expenses that he says that he incurred in the course of  
that occupation. We describe this as best we can in the next section of our decision.  
In the end, however, we do not believe that we received a complete and coherent  
explanation of either Mr Shah's activities or of the expenses that he claims to have  
incurred in those activities. In part, we think that this derives from some confusion on  
40 Mr Shah's part as to manner in which income should be computed for tax purposes  
and what represents a taxable activity and the allowable expenses of that activity. The  
documents that we had illustrated that confusion.

## The Facts

6. Mr Shah is employed in full-time employment by J B Boda & Co (UK) Limited. Their business is or includes reinsurance broking. He has been involved in this line of business as an employee for over 30 years. Mr Shah describes his self-employed  
5 occupation as that of “a reinsurance and business consultant”. Whatever he does in that occupation (as distinct from his employment) is done in his spare time and to an extent from his home.

7. The appropriate starting point is for us to consider exactly what it is that Mr Shah claims to be doing in this occupation. We were left in no doubt that he gives up a  
10 considerable amount of his time to activity of one sort or another outside the ordinary office hours of his full time employment. In correspondence Mr Shah explained his activity in the following terms—

15 “The self-employment consists of several units, for example, I deal with property account for which an income ... was declared by my wife but all the accounting, legal, agency, loans, insurance, maintenance, security, warranties & servicing, dealing with the local authorities, cleaning, gardening, tenancy work etc. are handled by me and members of my family jointly. ... I carry out Reinsurance and Business Consultancy work. This predominantly occupy me with net working with my customers in  
20 UK, Middle East, Far East, India, Africa, Americas and some part of Europe. ... The part-time work is almost freelance and where multi skill and multi task are utilised ... The voluntary work declared is a small part of my function and it does not need to generate much income but in the past voluntary work has led to income and it cannot be ignored or  
25 disassociated from my self-employment.”

8. From the correspondence and the evidence that Mr and Mrs Shah gave, we are able to discern three forms of activity that occupy Mr Shah’s spare time—

- (1) Administering and maintaining in various ways properties owned by him or his wife (or jointly by both of them);  
30 (2) Developing in various ways potential business contacts related to reinsurance business; and  
(3) Undertaking ‘voluntary’ work in various forms.

9. The first of these is easy to comprehend in the sense that all of the activity that Mr Shah describes is activity ordinarily associated with the ownership, maintenance and  
35 administration of rental properties. The problem for Mr Shah (as we explain later in our decision) is that the properties concerned appear to be owned jointly by him and his wife. Mr and Mrs Shah said that they initially owned two properties but subsequently had acquired a third. They said (although they were somewhat uncertain about the matter) that the third had been acquired in 2012 but it may have  
40 been earlier, possibly in 2010. In 2008-09 and 2009-10 Mr Shah declared gross rental income in his return, although after the deduction of property expenses and interest a loss had emerged. In 2010-2011 the gross rental income had evidently been declared in Mrs Shah’s return but not in his.

10. Mr and Mrs Shah acknowledged that they had acquired the properties jointly. We understood Mr Shah to suggest initially that a reason for his treating his activities in relation to the properties as part of his self-employed occupation was that he did all the work relating to them and that he was therefore effectively providing property management services to his wife. As the hearing progressed, however, it appeared that this was to some extent a family activity in which his wife and other members of his family were engaged to some extent as well. We received no evidence regarding the properties in question beyond brief details of two properties supplied by HMRC based on the SDLT returns that had been made when they were purchased. These showed Mr and Mrs Shah as joint purchasers. It is unnecessary for us to reach any conclusion on this matter other than to find, as we do without any other evidence, that the properties in question were jointly owned (legally and beneficially) by Mr and Mrs Shah in each of the years in question.

11. We had little evidence with which to discern the nature of the second activity. There was Mr Shah's description of it in the correspondence. His explanation at the hearing did not significantly clarify the matter. Perhaps the best description that we can offer is that he was active in building up contacts and business relationships, principally (he says) in the reinsurance field, for example by attending conferences and seminars after work. 'Net-working' might be a good description but to what real purpose we are unable to conclude.

12. We were unable to obtain any clear impression as to whether his activities are related to some extent to his full time employment. For example, the nature of his full-time employment might well mean that it is sensible for him to attend seminars or training courses to keep up-to-date on the latest regulatory developments in the reinsurance field. That might bring him into contact with others actively engaged in that field whom he might hope would be a source of future business in one way or another. This is speculative on our part because Mr Shah's explanation of his activity lacked even that degree of clarity.

13. The most obvious demonstration that we might expect to see of the activity in which Mr Shah claims to be engaged would be through the invoices that he renders for his services. In 2008-09 his business accounts declare 'fees' of £750.00; in 2009-10 there are 'fees' of £700.00 and in 2010-11 there are 'fees' of £700.00. None of these amounts, however, appear to be attributable to the second activity that we described in paragraph 8 above. Mr Shah produced three invoices. The first is an undated invoice for £700.00 "To Property A/C" and "Re: Properties Rental" describing professional fees in respect of the property portfolio.

14. The second is for no charge "To: Reinsurance A/C" "Re: Reinsurance Consultancy and Educational". It describes a variety of activities in these terms—

"To maintain contacts with overseas Reinsurers. Work closely by net working. Keep up with IRDA [Insurance Regulatory and Development Authority] rules and implications. Provide advise and consultancy with technical issues relating to Reinsurance.

Attend seminars i.r.o. Solvency II

Fund and provide educational material to under privilege students”

15. The only other material that Mr Shah provided as evidence of his activities under this head was a letter of engagement dated 13 July 2012 from Adarsha Consultancy & Management Services (P.) Limited of Mumbai. This recorded the following—

5                   “Pursuant our (*sic*) long standing business relationship we hereby confirm our being associated with you for providing Insurance, Reinsurance and related Consultancy services since January 2010 at commercial terms as mutually agreed.

10                   We thank you for your advise from time to time and we will keep this business relationship continuous.

Looking forward to everlasting professional relationship with you.”

16. Whatever the advice Mr Shah may have rendered to Adarsha Consultancy & Management Services (P.) Limited of Mumbai, it appears not to have been on any commercial terms that had generated any income in the years in issue. Mr Shah said that he had worked for Adarsha but in what way and to what effect was unclear beyond his claim to have spent some 60 or 70 hours for their benefit. We would expect to see some documented output for that amount of work. Mr Shah said that Adarsha owed him substantial sums for all his work but that he had not invoiced them pending agreement as to what he could charge or possibly what they would agree was owed. His fee remained to be negotiated and the income would be returned in his accounts on a cash (rather than an accruals) basis. He said that he was not paid on a time basis (even though he had invested some 60 or 70 hours for their benefit) but on a job basis. The nature of the ‘job’, however, remained unclear to us.

17. As regards the third category of voluntary work, Mr and Mrs Shah provided some impression of this. Mr Shah is active in his local Temple and provides considerable assistance to it and to members of its congregation. This evidently takes the form of accounting, financial and administrative services and general assistance with correspondence and dealing with local authorities and Government departments and agencies. If asked to assist, Mrs Shah told us that her husband seemed unable to refuse and as a result was constantly engaged in such activity in his spare time. The assistance that he renders to the Temple appeared consistent with the voluntary contribution that might be expected of any conscientious and committed member of a religious congregation. He was a member of the Audit Committee of his Temple and evidently recovered gift aid from HMRC. His wife said that people came to him for assistance because others charged for their services by the hour but she gave no specific examples that we noted.

18. The final invoice (also undated) that we were shown is again for no charge “To: Mr Hatal Shah” “Re: Welfare” and headed “Voluntary Work”. The address on the invoice is Mr Shah’s address and it is therefore unclear whether Mr Hatal Shah is a member of his family. The description of his activity is as follows:

“Providing assistance with DLA, HC1 forms.

Corresponding with various Local and National authorities.

Assisting him with residency, educational and medical issues.”

19. Mr Shah told us that this work was important in building contacts and the relationships that he hoped would eventually mature into profitable demands for his services. He told us that these activities had already generated small amounts of income which it appears were not represented by any invoices and had apparently been paid in cash. It was unclear to us whether these cash sums were part of the ‘fees’ that Mr Shah had returned in the years in question. Mr Shah told us that the first invoice in respect of the property account for £700 was reflected in a £400 charge in the property account described as “Accountancy fees”. So although on the face of the invoice the whole charge of £700 was related to the property account it might be that part represented the small cash sums that he had been paid but we find it impossible to reach any conclusion on this.

20. Mr Shah’s accounts enumerate a variety of expenses that he claims to deduct: train fares, telephone, postage, insurance, stationery, computer consumables, entertainment, utilities and overseas travel. Mr and Mrs Shah told us that one room in their home is dedicated to Mr Shah as his study/work room. Evidently he is the only person ever allowed to use it and it is otherwise locked. He also stores his business papers in the garage or garden shed. It appears that his ‘office’ is appropriately equipped, including a computer and printer.

21. The claimed expenses include entries for printer cartridges, stationery and a hard drive. Overall, however, the list of expenses raises as many questions as they answer: for example,

(1) the telephone expenses include charges for several mobile telephones covering the same time period and it appears from what we were told and from the information that HMRC had received that they represented the several mobile telephones used by different members of Mr Shah’s family;

(2) in 2009-10 the proportion of telephone expenses excluded from his business account as relating to ‘private use’ appears to have been deducted in his property account;

(3) the travel expenses are not easy to explain when one takes account of the fact that Mr Shah is engaged in full time employment but it appears that some at least of these travel expenses were incurred by Mrs Shah and others related to travel in relation to the property portfolio;

(4) utilities and similar household expenses are apportioned between business and private use but the allowable percentage of 20 per cent for business use seems large to us (even assuming that the expenses in question are all of a type that can properly be apportioned, which Mrs Newham contended they were not);

(5) Car expenses include a 50 per cent claim for what appear to be standing costs of two cars (to judge by the car tax and insurance claimed) and a 20 per cent claim for the running costs;

5 (6) The lists of general expenses claimed include expenses incurred at Pizza Hut, Burger King, Costa Coffee, Domino's, Zizzi, Ask, Caffe Nero, Bella Italia, Subway, and various other restaurants (which might perhaps all have been related to Mr Shah's networking) and also a suit, which Mr Shah explained was a replacement for one that was damaged in the course of examining builder's work at a property at short notice.

10 22. As appears from that short summary of some of the issues raised by the expenses claimed, it seems that the expenses (if and in so far as they are deductible at all) relate to all three categories of activity summarised in paragraph 8. In this respect we think that it would be difficult to say with any certainty which expenses related to which activity. Some seem clear but many are not. Certainly to our mind Mr and Mrs Shah were unable to give a clear account in respect of those expenses (such as travel and telephone) for which questions were put to them by Mrs Newham or the Tribunal.

### **HMRC's determinations and submissions**

15 23. HMRC's initial determination in respect of the year 2010-11 was that the expenses totalling £7,985 were not allowable against the turnover of £700 and should be added back. This left £700 from self-employment in charge to tax. Similar adjustments to disallow all expenses were made in respect of 2009-10 (leaving £700 in charge) and 2008-09 (leaving £750 in charge). The tax due in each year was  
20 calculated to reflect these adjustments.

24. On review, HMRC determined that the expenses so far as relating to the property account were attributable to a UK property business and should be dealt with through a separate computation of UK business property income rather than as trade expenses. To the extent that invoiced income of £700 appeared to relate to the property account it did not in fact represent income that should be brought into account as trade income  
25 (or at all).

25. As regards the reinsurance and consultancy business and voluntary work, the reviewer concluded that these activities did not amount to the conduct of a trade in the years in question. At best, "You appear to be making contracts in preparation for possible future trading, but do not appear to have actually commenced trading."  
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26. The reviewer accordingly excluded both income and expenses from the calculation of Mr Shah's income for the three years, leading to small adjustments in the tax due for each year.

27. Mrs Newham submitted that the reviewer had reached the right conclusion and asked us to dismiss Mr Shah's appeal and confirm the reviewer's figures.  
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### **Our decision**

28. We can state our conclusions relatively shortly.

29. The UK income tax system draws (and has always drawn) a clear distinction between income arising from the ownership and letting of land and the conduct of a trade or profession. The ownership and letting of land in the UK is now referred to as  
40 a UK property business (see section 264 Income Tax (Trading and Other Income) Act

2005) and the profits of that business are to be calculated under the rules provided in Part 3 of that Act (Chapter 3 of Part 3 provides the basic rules of computation).

5 30. In returning the income from the let properties separately Mr Shah appears to have appreciated this distinction. We are not called upon to decide whether the property income has been correctly returned in terms of the gross rents received, the expenses claimed and the allocation between Mr Shah's return and his wife's return because that did not form part of HMRC's enquiry into his return. What Mr Shah has not appreciated, however, is that his activities in relation to rented property that he owns does not amount to the conduct of a trade but are activities in his capacity as  
10 landlord and as a person carrying on a UK property business.

31. To the extent that Mr Shah incurs actual expenses in the course of those activities the expenses may be deductible in the property account. This would include the professional charges of a managing agent, if the services of such a person were engaged. A landlord who spends time in managing the properties that he owns  
15 cannot, however, charge and deduct a 'managing agent's fee' for his work on the properties and the fact that the properties are jointly owned by another member of the family does not alter this. Indeed, even if we had concluded that the properties were solely owned by Mrs Shah, we do not think that Mr Shah could in the circumstances have claimed to charge a 'fee' for his work on her properties. In that event he would  
20 have been providing assistance to her within the family context as her husband and outside any commercial framework that would have supported a claim to charge (and deduct) a 'fee' for his services.

32. From Mr Shah's evidence the 'fee' of £700 described on the first undated invoice appears to be a £400 deduction for accountancy expenses in the property account  
25 representing actual expenses incurred and £300 cash receipts for consultancy business. We do not have to determine this and do not do so. The only conclusion we need to reach is that the £700 invoiced to the Property account (or whatever part of that is properly attributable to Mr Shah's activities in relation to the properties) is not trading income, as HMRC had concluded on review. Furthermore, no part of the  
30 expenses claimed that relate to Mr Shah's (or his family's) activities in relation to the properties are properly deductible as expenses wholly and exclusively incurred for the purposes of any trading or professional activity conducted by Mr Shah.

33. That leaves the question whether Mr Shah's 'net-working' and other activities (such as those relating to Adarsha Consultancy & Management Services (P.) Limited  
35 of Mumbai) and his 'voluntary' work amounted to the conduct of any trade or profession. In this respect Mr Shah presented no evidence of any substance to support his claim that whatever it was he was doing amounted to the conduct of any trade or profession. We can accept that he undertook a certain amount of 'voluntary' work for the benefit of his Temple and for other members of its congregation or those within  
40 their local community. However, the 'voluntary' rendering of services of one sort or another does not usually amount to the carrying on of any trade or profession and even if it does it is not an activity that supports any claim for loss relief in respect of the expenses incurred in that activity.

34. This is because the use of the losses of a trade or profession against other income  
45 is not available unless the trade or profession is conducted on a commercial basis and

with a view to the realisation of profits in the trade or profession (see section 66 Income Tax Act 2007). If a trade is carried on so as to afford a reasonable expectation of profit, it can be treated as carried on at that time with a view to the realisation of profits. However, Mr Shah has provided no evidence to support a  
5 conclusion that whatever activity he is carrying on (and even if correctly regarded as a trade or profession) is carried on with a view to realising profit rather than with a view to claiming tax relief for certain expenses that he and his family incur.

35. As regards the expenses claimed, we can accept that the schedules of expenses in fact reflect amounts expended by Mr Shah and other members of his family. As we  
10 have noted, however, some appear to be related to the ownership of properties. Many appear to be personal or general household expenses that cannot be deducted as wholly and exclusively incurred for the purposes of the trade or profession, even where Mr Shah has purported to apportion the expense (but on no supported basis) between ‘business’ and ‘personal’ (see section 34 Income Tax (Trading and Other  
15 Income) Act 2005). Others might be non-deductible entertainment expenses (see section 45 of the 2005 Act).

36. We think it a hopeless task based on the evidence before us to discern which of the expenses might properly be deductible in any business account prepared by Mr Shah and we would therefore be bound to conclude that none are allowed to be  
20 deducted under section 34 or section 45 of the 2005 Act. As we are not satisfied, however, that Mr Shah is conducting any trade or profession in respect of which tax is charged under the 2005 Act, no further analysis of the expenses is required. If Mr Shah is in fact conducting some form of business activity (notwithstanding the absence of evidence suggesting that he is) it seems to us that he would be well advised  
25 to seek professional guidance and assistance to ensure that the income and expenses of that activity are correctly recorded and reported to HMRC.

37. We agree with HMRC’s decision on review, which we confirm, and we dismiss Mr Shah’s appeal.

38. This document contains full findings of fact and reasons for the decision. Any  
30 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)”  
35 which accompanies and forms part of this decision notice.

**MALCOLM GAMMIE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 6 May 2014**