



**TC04048**

**Appeal number: TC/2013/07058**

*Income tax – whether Appellant had received company benefits in kind - no -  
benefits received by Appellant from her husband as part of a maintenance  
agreement - yes - appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SAMANTHA GIBSON**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE MICHAEL S CONNELL  
                     MRS BEVERLEY TANNER**

**Sitting in public at SSCS Byron House 2a Maid Marion Way Nottingham on 2  
July 2014**

**Mr J M Bouckley for the Appellant**

**Mr A Burke Officer of HM Revenue and Customs for the Respondents**

## DECISION

### The Appeal

1. This is an appeal by Mrs Samantha Gibson (“the Appellant”) against HMRC’s  
5 decision of 19 July 2013, to issue a Revenue Assessment for 2010/11 in the sum of  
£6,131.00 under Regulation 29 TMA 1970.

### Background

2. The Appellant filed her Self Assessment Tax Return for the year ended 5 April  
10 2011, electronically on 24 January 2012. Her return as submitted, did not reflect any  
pay or benefits from her employment with Park Industrial & Agricultural Holdings  
Ltd (“the Company”) and her tax calculation showed no tax due

3. As during the year 2010/11 deductions on account of the Appellant’s liability  
had been applied, a tax repayment was made on 12 May 2012 directly to the bank  
account shown on the SATR.

15 4. HMRC then received, under Regulations 73 and 85, from the Company the end  
of year details of pay and tax (P14) for the Appellant and details of benefits relating to  
a company car, car fuel and a beneficial loan (P11 D). These showed pay £12,000,  
car benefits of £16,684, car fuel benefit of £6,300 and a beneficial loan assessment of  
£7,666 (based on “the cash equivalent”).

20 5. On 25 April 2013, as the time limit for HMRC to enquire into the Appellant’s  
return had expired on 24 January 2013, the Appellant was advised that under s29  
TMA 1970 her self-assessment tax return for 2011 was being looked at due to the  
omission of details for her employment with the Company.

25 6. Mrs Gibson replied saying she did not dispute the salary figure but said that she  
had not received any company car, fuel or loan benefits. Due to an acrimonious  
divorce from her husband, who was a Director of Park Industrial & Agricultural  
Holdings Ltd she was unable to access the company’s records and provide supporting  
evidence.

30 7. The Appellant provided some background information to HMRC saying that  
she took up employment with the Company in 1998. The Appellant and the proprietor  
of the Company, Mr Stephen Gibson, were married in 2000 and had two sons. The  
Appellant’s salary was set at £12,000. Not long after joining the company she was  
provided with a car, and fuel was paid for from her husband’s personal bank account.  
Unlike her ex-husband and his drivers, the Appellant says that she never had a  
35 company fuel card.

8. In early 2009, the Appellant’s marriage broke down and she left the matrimonial  
home in Devon, moving with her two sons to a new house bought by her husband,  
using a mortgage from Cheltenham & Gloucester Building Society. After 2009 she

did not work for the Company, but continued to receive a salary of £12,000 until her 'employment' ceased in March 2012.

5 9. The Appellant says that she was told by her husband that the car she had been provided with, a Land Rover Discovery, was no longer a company car, so no tax would be payable for 2010/11. The vehicle was never used for the Company's business after she left Devon in 2009 and her husband paid for repairs to the car using his personal account. These benefits, she says were not 'taxable perks' provided by the Company but part of an agreed maintenance package for the Appellant and her children.

10 10. The Appellant provided a copy of an Order made by Plymouth County Court dated 6 September 2011 which (inter alia) said:

'UPON the Respondent husband agreeing with the Applicant wife and undertaking to the Court;

15 To continue each month to pay in full the monthly mortgage and associated HSBC loan repayments relating to Bridge House, Langar, Nottinghamshire

To pay in full the running costs of the wife's motor car (other than fuel costs)

20 To pay in full all HMRC current and future tax liabilities arising in relation to her employment by the husband's company and to the provision of a motor car by the company for her use, but on the basis that the wife agrees to co-operate with the husband in the selection of a suitable alternative car (of her choice) which reduces the HMRC benefits in kind tax liability arising from its provision by the company.

IT IS ORDERED THAT

25 The husband shall pay or cause to be paid to the wife maintenance pending suit and thereafter (if relevant) interim maintenance of £3,000.00 per calendar month (with credit to be given for her salary received each month) for her general maintenance and that of the children of the family.'

30 11. The Appellant says that her ex-husband chose to keep paying her salary as part of the £3,000 per calendar month ordered by the Court and let her keep the Land Rover Discovery. She says that there were problems with the maintenance payments from very early on, which was the reason for the Court Order.

12. The Appellant asserts that the Court Order formalised an existing maintenance arrangement between her and Mr Gibson that he personally discharged:

- i. The provision of a motor car by the company for her use.
- ii. Her car running costs.
- 35 iii. Any tax liabilities arising from her employment with the Company.

13. The Appellant says that she has never had a loan from the Company and that the audited accounts for 2010/11 prove this, as do her bank statements and those relating

to the joint account she held with her husband. In fact during this period, as copy letters from her solicitor to her husband's solicitors show, she was in dire straits financially. The Appellant asserted that HMRC's claim was based on factual inaccuracies arising from misleading information given by her ex-husband. There was  
5 no evidence whatsoever other than false information provided in form P11D sent in by the Company to show that she had received any of the benefits claimed by HMRC.

14. The Appellant says that on 6 April 2011 she was issued with a Notice to File a Self-Assessment for 2010/11. Up until that point, her husband had filed her returns but he stopped doing so in 2011 and refused to provide her with information to  
10 complete her return. On the advice of a friend, she 'put zero's in all the boxes', assuming HMRC would then contact the Company for the relevant information. She admits that she was foolish to do this but says she 'did not know what information to put in the most important part of the form, namely that relating to a company car'. She says that she had no idea this could lead to her receiving a tax rebate.

15 15. HMRC's records, gathered from information provided by the Company, showed that the Appellant had the use of a company car in the tax years 2009/10, 2010/11 and 2011/12, and that it was not until 3 June 2011, that she ceased to have the car. HMRC accepted the P11D submitted by the employer as being accurate and issued a Revenue Assessment for 2010/11 assessing the Appellant's salary, car, car fuel benefits and the  
20 beneficial loan.

16. HMRC maintained that for the year 2010/11, in the absence of any evidence from the Appellant to support her assertions that she had not received any benefits from the Company, it would have to be assumed that the figures provided by the Company were correct.

25 17. HMRC acknowledged in correspondence with the Appellant that the Court Order 'suggested' the Appellant's ex-husband had agreed to pay for the provision of a car, running costs and any associated tax liabilities on those benefits or from her employment, but said that the tax had to be charged against the Appellant, as the  
30 person whose income it had resulted from. Any subsequent agreement relating to the payment of the tax in question was a private matter between the Appellant and her ex-husband.

18. The Appellant paid the tax and interest claimed by HMRC on 13 September 2013 and on 9 October 2013, appealed HMRC's regulation 29 assessment.

#### The Appellant's case

35 19. At the hearing, the Appellant was represented by her father Mr John Bouckley.

20. Mr Bouckley said that the Appellant did not dispute the fact that she had received a £12,000 salary and that aspect of the matter was not under appeal and prior to the tax refund which his daughter had received, tax of £1,104 on her salary which had been deducted at source was the correct amount.

40 21. Mr Bouckley reiterated his daughter's grounds of appeal outlined above.

22. The bundle of documents provided to the Tribunal contained both HMRC's and the Appellant's documentary evidence including:

- 5 i. HMRC's record of P11D returns in respect of the Appellant for the years 2009/10, 2010/11 and 2011/12, based in information and returns submitted by the Company.
- ii. PAYE record of benefits received by the Appellant for years 2009/10, 2010/11 and 2011/12, based on information and returns submitted by the Company.
- iii. The Appellant's pay slips during the tax year 2010/11.
- 10 iv. Mr Gibson's P11D for 2008/09.
- v. An extract from Mr Gibson's tax return for 2008/09.
- vi. An extract from the Company accounts for years 2010/11.
- vii. A full set of 2010/11 HSBC bank statements for the joint account of the Appellant and Mr Gibson.
- 15 viii. A full set of 2010/11 statements for the Appellant's bank account.
- ix. Visa statements from Mr Gibson's personal accounts with Nat West and Co-Op bank.
- x. An example of Monthly Expenditure for the Appellant (required by Court Order).
- 20 xi. Copy emails from Mr Gibson instructing the Appellant to stop using his visa card for fuel payment.

23. The Appellant asserts that the above documentation supports her contention that she did not have a directors loan account with the company. The extracted Company accounts for 2010/11 showed that two individuals had a loan account, Mr S Gibson and Mr S P Smith. Mr Gibson had a director's loan of £301,228 at 30 April 2010 which had increased to £390,854 as at 30 April 2011. The other individual had a director's loan of £10,000 as at 30 April 2010 which had increased to £19,500 as at 30 April 2011. The accounts do not show any loan to the Appellant and her bank statements showed no loan payment either to or from her.

30 24. The copy visa statements from Mr Gibson's personal accounts with Nat West and Co-Op bank showed that the Appellant's fuel had been paid by Mr Gibson not the Company during the relevant tax year and that her car repair bills had been paid from Mr Gibson's personal account.

25. The extract from Mr Gibson's tax return for 2008/09 and Mr Gibson's P11D showed that the Appellant's Land Rover Discovery car had been erroneously listed against Mr Gibson's name, rather than the Range Rover which was his company car.

#### HMRC's submissions

5 26. Mr Burke for HMRC said that the burden of proof was on the Appellant to show that the 2010/11 Revenue assessment was incorrect. At the time of the assessment the Appellant had not provided any evidence to show that the information given by the Company in its annual, year end returns and HMRC's assessment, were incorrect.

10 27. Mr Burke said that he was prepared to accept that although the Company's returns supported the Revenue Assessment, the evidence produced by the Appellant supported her claim that she did not, during the relevant tax year, have a directors loan from the Company and that the beneficial loan assessment of £7,666 was not correct. He also accepted that on the evidence now available, the Appellant had not received any fuel benefits from the Company. He argued however that the Appellant  
15 had not produced any evidence to show that she had not received the car benefit of £16,684.

28. Mr Burke said that the Appellant had signed all her previous tax returns which showed that the vehicle she used, was provided by the company by reason of her employment and that its use and the car benefit had been taxed accordingly. There  
20 was nothing to show that the situation had changed in 2010/11.

#### Conclusion

29. HMRC now accept that the Appellant did not have a director's loan or receive any fuel benefits from the Company in 2010/11. The issue for the Tribunal to decide is therefore whether the assessment in respect of the car benefit is correct.

25 30. The car in question was owned by the Company but used by the Appellant as part of her remuneration package up to the date she ceased to be employed by the Company in March 2012. The vehicle was not used for Company business after the Appellant left Devon in 2009, following which her husband paid for repairs and other costs of running the car (car tax, insurance and mot's) using his personal account. The  
30 Appellant did not work for the company after 2009, but continued to receive her salary of £12,000 until her 'employment' ceased in March 2012.

31. The County Court Order supports the Appellant's argument that the maintenance package agreed between the Appellant and Mr Gibson included the provision by him, not the Company, of a vehicle, and that he would pay for the  
35 running costs of the vehicle (other than fuel costs, which he paid personally in any event) and to pay all tax liabilities arising in relation to, not only her employment with the Company but also to the provision of a motor car by the Company.

32. Maintenance payments under agreements or court orders made in the EU Member States since 15 March 1988 are generally outside the UK tax system. This  
40 was extended to European Economic Area member states from 1 January 2004.

Payments are made without deduction of tax and the recipient is not taxed on the receipt of the payment. In other words there is no relief for the payer where payments are made out of taxed income or gains.

5 33. The payments and benefits made to the Appellant by the Company must therefore be treated as income in the hands of the Appellant's ex-husband, Mr Gibson, and taxed accordingly. The use of the car was not a taxable emolument in the hands of the Appellant.

34. For the above reasons we allow the appeal and the Revenue assessments are discharged.

10 35. 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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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 3 October 2014**

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