



TC04085

Appeal number: TC/2012/07025

INCOME TAX – understatement of sales and rental income – whether deliberate – quantum of assessments and penalties – assessments and penalties excessive – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DAVINDER SINGH DOSANJH

Appellant

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
 MR JULIAN STAFFORD**

Sitting in public in Birmingham on 5, 6 December 2013 and 15 April 2014

Mr John Cannon of Baker Cannon & Co Ltd Accountants for the Appellant

Mrs Nadine Newham of HM Revenue & Customs for the Respondents

DECISION

5 1. The appellant is self-employed and runs a newsagent and tobacconist shop and a
separate residential property letting business. HMRC opened an enquiry into the
appellant's self-assessment return for 2005-06 on 23 April 2009. Following the
enquiry, on 22 December 2012 HMRC issued a closure notice and discovery
10 assessments to the appellant covering what they allege are understated shop takings in
tax years 1999-00 to 2007-08 and understated rental income for 2004-05 to 2007-08.

2. HMRC contend that in these tax years the appellant deliberately understated his
taxable income in his self-assessment returns. They have issued penalties in respect of
all the assessments.

3. The tax and penalties under appeal are as follows:

15

Tax Year	Additional Tax £	Penalty £
1999-00	3,136	1,882
2000-01	3,384	2,030
2001-02	2,917	1,750
2002-03	3,008	1,805
2003-04	1,426	856
2004-05	6,379	3,827
2005-06	5,708	3,425
2006-07	7,624	4,574
2007-08	7,457	4,474
Total:	41,039	24,623

4. The grounds of appeal dated 5 July 2012 may be summarised as follows:

20 (1) The basis on which HMRC have identified and calculated the alleged
undeclared shop takings and rental income is flawed. HMRC relied on a cash
deficiency in 2005-06 between personal and household expenditure on the one
hand and earnings and other income on the other. The calculation does not take
into account other family income.

25 (2) The basis on which HMRC have identified and calculated the alleged
undeclared property income is flawed. The calculation uses unreasonable
occupancy levels and fails to take into account allowable expenditure.

5. In broad terms, the issues which arise on this appeal are as follows:

(1) Was there any under-declaration of the shop takings?

(2) It is accepted that the income from rental properties was understated. The issue is therefore to what extent is the appellant entitled to deduct any further expenditure in calculating profits from rental properties?

5 (3) Were the family finances sufficient to meet private expenditure or was there a shortfall in income arising as a result of undeclared drawings from the shop and rental properties?

6. On the first day of the hearing Mr Cannon made an application to adduce a substantial amount of new evidence described as a “Financial Commentary” of the shop business. This included an analysis of the financial performance of the business and a detailed mark up exercise for various categories of goods sold by the shop. Mr Cannon applied to admit this in evidence with a view to establishing that HMRC’s conclusion as to the income from the shop was unreasonable. The first indication the appellant gave that he was carrying out such an exercise was on 25 November 2013, less than 2 weeks before the hearing. The evidence itself was not served on HMRC until just before the hearing and at the time of the hearing HMRC had had no opportunity to consider the evidence.

7. We concluded that it was far too late in the day for the appellant to adduce evidence challenging the assessments on a wholly new basis. There was no good reason for the evidence not to have been served in good time prior to the hearing. In all the circumstances we refused Mr Cannon’s application.

Findings of Fact

8. We heard evidence from Mrs Angela Aitken an officer of HMRC on behalf of HMRC. On behalf of the appellant we heard evidence from the appellant himself and his daughter Bupinder. In the light of all the evidence we make the following findings of fact.

9. The appellant has been self-employed running the newsagents business since 22 March 1996. He traded from a shop at 61 High Street Daventry until June 2009 when the business was relocated to a more modern shop in a better position. The appellant is an intelligent man who obtained a degree in economics and an MBA from Aston Business School. Personal problems, which we do not need to set out here, meant that he was under considerable stress whilst running the businesses. We accept that running a busy newsagent shop including paper rounds was a very demanding job involving long hours. As a result the appellant fell behind in producing accounts and lodging tax returns.

10. The appellant is married with five daughters and one son. In 2005-06 two daughters lived at home, Bupinder and Herdial. His son Harpreet was at university but came home at weekends. The other daughters lived away from home. Herdial was the youngest, born in 1981.

40 11. The appellant filed his self-assessment return for 2005-06 on 1 February 2008, one year after the due date. It contained entries for income from self-employment and

from property. It also stated that the profits from self-employment were provisional figures and that final figures would be provided by 31 July 2008.

5 12. The figure for self-employment income was £20,000. No expenses were identified and the net profit was also £20,000. The rental income was put at £1,729, expenses were £765 and a 10% wear and tear allowance of £119 was claimed giving a net profit of £845. Losses brought forward from the previous year were £672.

13. The 2005-06 return also included gross interest received of £20. Both parties agreed the figure should have been £1,452 although no tax loss resulted from this omission.

10 14. Mrs Aitken opened the enquiry into the appellant's return for 2005-06 because the return was late and included provisional figures. The appellant had submitted late returns and used provisional figures in all his returns since 1998-99. Mrs Aitken was also concerned that the appellant appeared to have accumulated substantial assets with only a modest declared income.

15 15. The appellant's accountants in 2005-06 were Cottons. They put in amended self-employment pages. There was an issue as to when those amended pages were sent to HMRC. The bundle included a copy of a covering letter dated 4 April 2008 but they do not appear to have been received by HMRC until May 2009, shortly after the enquiry was opened. In any event, the amended pages showed income of £394,956, cost of sales £328,456, expenses of £51,227 and a net profit of £15,293.

20 16. Cottons also produced a full set of accounts for the year ended 5 April 2006. Curiously these were signed and dated 14 March 2007 which, if that is the true date, begs the question why provisional figures were used in the 2005-06 tax return. The appellant's drawings in those accounts were £15,630. That figure was based principally on a cash account difference of £16,515 identified by Cottons in drawing up the accounts. The appellant had kept no record of his cash drawings.

25 17. The appellant's day to day record keeping for the shop employed a similar system as the previous owners, a large chain of newsagents, as follows:

30 (1) There were two tills at the shop. The appellant would take a z reading from each till at the end of each day. This would give the daily takings since the last z reading. The appellant was particularly keen to ensure that the till readings balanced to the cash in the till. He would therefore also take periodic x readings during the course of a day.

35 (2) The z readings gave a breakdown of sales between various categories, such as newspapers, confectionery and tobacco. The appellant noted the takings for each category on a "Weekly Cash Summary", making adjustments for any over-rings or refunds. The shop was open seven days a week and the summaries had a column for each day of the week.

40 (3) The weekly cash summaries were filled in by the appellant on a regular basis although by 2009 he had not filled them in for more than a year.

(4) The appellant said that he considered there was no need to keep the printed z readings and so once he had noted the information down he threw them away. He also threw the till rolls away.

5 (5) Purchase invoices were retained and given a reference number by the appellant. He noted them down on quarterly schedules which showed his reference number, date of invoice and name of supplier together with the net, VAT and gross amounts payable. These schedules were filled in on a regular basis.

10 (6) The appellant would also produce a VAT summary on a quarterly basis. He took turnover figures from the weekly cash summaries and purchases from the quarterly purchase schedules to complete the VAT summary.

18. Cottons used the information above to produce quarterly VAT returns and annual accounts for the appellant's business.

15 19. As stated, the appellant did not retain till rolls or z readings from the tills. Further most of the expenditure in the business was made in cash. The appellant told us that this was to avoid bank charges. In the absence of reliable records Mrs Aitken decided to test the accuracy of the drawings figure by considering whether it was consistent with the appellant's private expenditure. In doing so she identified what she considered to be an unexplained income deficit of £21,500. She concluded that this
20 represented undeclared income from shop sales and the rental properties. She estimated the undeclared rental income was £10,250 meaning that there were undeclared shop sales of £11,250. Using RPI adjustments these figures were extrapolated to previous and subsequent tax years resulting in the assessments identified above.

25 20. Mrs Aitken considered that the appellant had deliberately understated his income from self-employment and rental properties. She notified the penalties identified above giving a credit of 5% for disclosure, 20% for co-operation and 15% for seriousness. The penalties therefore represented 60% of the tax she considered to have been deliberately omitted from the returns.

30 21. The appellant was cross-examined about his annual accounts for the shop business for years ended 5 April 2007 and 5 April 2008. The 2007 accounts were prepared by Cottons and no till rolls or z readings had been retained. The 2008 accounts had been prepared by Mr Cannon's firm using till rolls and z readings that the appellant had retained with a view to preparing his weekly cash summaries.

35 22. The 2007 accounts showed a turnover of £435,135, purchases of £369,431 and a net profit of £14,055. The 2008 accounts showed a turnover of £399,860, purchases of £321,955 and a net profit of £33,248. These figures compared to provisional figures for both years in the appellant's self-assessment returns of a net profit of £20,000. At
40 the time the 2007-08 return was made Mr Cannon was not yet acting for the appellant. Once he started acting he embarked on the task of bringing the appellant's tax affairs up to date, including VAT, PAYE and income tax.

23. Mrs Newham for HMRC submitted that the differences suggested the appellant had not been declaring his true profit for 2007 and earlier years. The appellant refuted this, saying that in mid 2007 a close competitor had gone out of business after a new Tesco supermarket opened. In late 2007 the shop installed a lottery terminal which brought in more business, not just lottery sales.

24. The evidence we had was not sufficiently cogent for us to make any findings as to the significance of differences between the 2007 and 2008 accounts. The increased profit figure is at least consistent with both parties' submissions.

25. The evidence before us focussed on the reliability of Mrs Aitken's analysis of private income and expenditure for 2005-06 from which she had identified undeclared income of £21,500 as follows:

		£
Declared Income:	Shop Drawings	16,515
	Rental Income	1,729
	Wife's Wages	4,895
	Total Available Income:	23,139
Expenditure:	Deposits into Bank Accounts	38,236
	Household Cash Spending	5,700
	Capital Introduced into Business	700
	Total Expenditure:	44,636
Shortfall in Income:		£ 21,497

26. Mr Cannon on behalf of the appellant took issue with specific figures in this analysis and also on the overall approach taken by Mrs Aitken.

27. The deposits into bank accounts included a sum of £23,626 which Mrs Aitken said had been deposited into the appellant's Barclays Openplan Savings account. This was an account the appellant had opened to justify using the Barclays branch which was two doors away from the shop in order to obtain change for the tills.

28. Mrs Aitken identified the figure of £23,626 from bank statements but at the time of doing that exercise she did not have statements for a period of two months in the year 2005-06. Deposits into the account were £19,688 in the ten month period for

which she did have statements and she extrapolated this to give a 12 month figure. In fact the hearing bundles included statements for the two missing months showing that there had been no deposits. During the course of her evidence Mrs Aitken accepted that the shortfall in income should therefore be reduced to £17,559.

5 29. There was a significant issue as to the extent to which the appellant's children contributed to the family income. In particular the extent to which they contributed to household cash expenditure.

30. Following a meeting with the appellant and Cottons on 27 August 2009 Mrs Aitken prepared notes of the meeting and sent them to Cottons for agreement by letter
10 dated 1 September 2009. The typewritten notes record as follows:

“9. *The children do not pay any regular sum to the parents to cover housekeeping and board.*

10. *The children help out in the evenings and at weekends in the shop and are paid for this and the money paid to them is theirs to spend how they wish.*

15 11. *[The appellant] advised that the children tend to spend all of their income especially in view of the amount of stuff lying around at home.”*

31. Mrs Aitken's handwritten notes made during the course of the meeting also record “*no housekeeping from children*”.

20 32. Cottons did not agree paragraphs 9-11 of the notes. They stated in a response dated 27 October 2009:

25 “*With regard to points 9-11. This is not entirely accurate; it is common practice within Asian households that families share everything – there is very little or no divisions to access to cash/wealth. Wages are not always ‘paid’ more so formed part of the family pot.”*

33. We are satisfied that Mrs Aitken prepared the typed notes immediately following the meeting and that they accurately reflect what was said at the meeting. Further we are satisfied that the household income comprised the appellant's shop drawings, rental income and wages paid to his wife which were agreed at £4,895.

30 34. Mrs Aitken was right to take the gross rental income rather than the net rental income because the appellant's evidence was that rent payments were paid into the bank accounts.

35 35. On 10 December 2009 Cottons sent to Mrs Aitken a schedule of the appellant's personal and private household expenditure for 2005-06. This included a sum of £5,700 said to have been paid by Mrs Dosanjh, Bupinder and Herdial. It was expressed to cover all food, toiletries, cleaning and pet food. The appellant did not dispute this figure at the hearing. He maintained that Bupinder would have

contributed up to 50% of all household costs, including the cash spending, and that Herdial and Harpreet would also contribute to the family finances.

36. The appellant gave evidence that cash of between £8-10,000 was kept in the house and was treated as belonging to the whole family. It was left to the responsibility of each family member as to how it was used. The appellant initially said that this sum had been saved over many years and it did not really matter to him whether cash was held in the house or at the bank. Subsequently and inconsistently he stated that in 2005-06 he was trying to channel cash into the bank accounts but he didn't always have the time or energy to do it. We do not accept that it was any lack of time or energy on the appellant's part that prevented him from paying these funds into the savings account.

37. Bupinder moved back to live with her parents in December 2003 until she got married in late 2006. She was therefore living at the family home throughout tax year 2005-06. During that period she worked as a sales executive for GE Healthcare. Effectively she was based at home for her work.

38. In 2005-06 Bupinder's gross salary was £39,333. She was not expected to pay rent or to make any financial contribution to the household. However she took it upon herself to pay bills for Sky TV, BT and other utility bills occasionally. Initially Bupinder said that she would do the weekly food shopping and gladly paid for it. She got into a routine of going shopping every Saturday morning.

39. We have no hesitation in accepting Bupinder as an honest witness doing her best to assist the tribunal. However in giving evidence she was trying to remember what must at the time have seemed inconsequential matters.

40. Bupinder described herself as a "card person" by which she meant that most of her expenditure would be made by credit or debit card rather than cash. Her Lloyds TSB statements were in evidence for the period from 20 January 2006 to 1 November 2006. The statements show no pattern of cash withdrawals. We doubt Bupinder would have withdrawn cash to pay for weekly grocery shopping, she would have used a credit or debit card. There were a small number of card transactions at supermarkets consistent with a family shop, but not to any significant extent in the context of the issues in this appeal.

41. In the light of the evidence we are not satisfied that Bupinder contributed to the household expenditure of £5,700 identified by the appellant and used by Mrs Aitken in her income and expenditure account.

42. Herdial and Harpreet helped in the shop. Herdial also had another job although the appellant was not aware of that fact at the time. We accept that Herdial was paid £2,550 and Harpreet was paid £2,450 in wages from the shop. We heard no evidence from Herdial and Harpreet. In the light of Mrs Aitken's evidence as to her notes of meeting we are not satisfied that they contributed to the family finances.

43. In the light of all the evidence we are satisfied that there was an unexplained shortfall in the appellant's declared income necessary to fund the expenditure identified by Mrs Aitken.

44. The appellant maintained no records at all of rental income or expenditure.

5 45. In 2005-06 the appellant owned 3 rental properties – 418, Ansty Road, Coventry was purchased in 1995 or 1996. It has two double bedrooms, a box room and a reception room. 138 The Chesils, Coventry was purchased in the early 1990s. It has two double bedrooms, a box room and two reception rooms. 17 Earls Croft, Coventry was purchased in about 2002. It has two double bedrooms, a box room and two
10 reception rooms.

46. The appellant bought the properties as an investment intending to rent them as student accommodation but that didn't take off. He had renovated them himself but not to a very high standard. He let them as multi-occupancy lets, that is a room in a house with shared facilities. They were advertised in the Coventry Evening Telegraph and generally let to people working in Coventry on short-term contracts. The
15 appellant maintained that there was a very low occupancy rate. Occupiers were there short term. There might be 3 or 4 persons occupying the houses one month and 1 or 2 the next. He suggested that overall occupancy equated to 1 person per house per year.

47. The appellant failed to return any rental income from the properties until 2002-
20 03 when 17 Earls Croft was purchased. The only explanation the appellant had for this failure to make a return of income was that he was not making any money on the properties.

48. HMRC officers under the supervision of Mrs Aitken used records including PAYE records, DSS records and the electoral roll to identify who was resident at the
25 rental properties and over what periods for tax years going back to 1995-96. From this information Mrs Aitken made an estimate of the likely rental income. For 2005-06 she estimated that the appellant's gross rental income was £11,970. He had declared rental income of £1,729 so she therefore concluded that the appellant had understated his rental income by £10,241.

30 49. The appellant maintained that each person occupying a room in the rental properties would pay £266 per month. That is consistent with deposits made into the appellant's Halifax account and the Barclays Openplan account. Round sums of £200 paid into the Halifax account would be deposits. Deposits of £133 into the Barclays account would be rent for half a month.

35 50. In early 2008 the appellant began converting the rental properties to single occupancy lets because he wanted to obtain buy to let mortgages in order to help fund the purchase of a new shop. A new shop was purchased in 2008.

51. The appellant asserted that his conversion of the rental properties to single
40 occupancy from March 2008 was inconsistent with the exercise conducted by HMRC as to the occupants of the rental properties. That exercise suggested that during 2008-09, 17 Earls Croft was occupied by a Mrs Barnes for 12 months, Miss Pritchard for 6

months and Mr Cowie for 9 months. Indeed the exercise suggested that Mrs Barnes had occupied the property from July 2003 until November 2009 which the appellant said was impossible.

5 52. Whilst Mr Cannon criticised Mrs Aitken's approach in her estimate of the number of occupants in the rental properties at any one time, he also stated that he had worked out a higher figure for rental income than Mrs Aitken. He accepted that rental income was understated in the 2005-06 return. We do not therefore need to consider the reliability of Mrs Aitken's estimate of rental income. The real issue is what
10 allowable expenditure was incurred by the appellant in relation to the rental properties.

53. The expenditure Mr Cannon suggested should be taken into account was as follows:

- (1) Council tax, which was paid by the appellant because the properties were multiple occupancy properties.
- 15 (2) Insurance.
- (3) Utility bills, apart from electricity which was paid by occupiers although the appellant claimed he was occasionally left liable for electricity usage.
- (4) Repairs.
- (5) TV licences.

20 54. The appellant maintained in evidence that the rental income returned in his 2005-06 return amounting to £1,729 was the total income after expenses evidenced in the Halifax account. That cannot be correct. As we have noted, the appellant's tax return for 2005-06 included expenses of £765. The expenses comprised £545 (described as rates and insurance) and £220 (described as other expenses). We were
25 not told by the appellant where these figures came from; all he could say was that Cottons had included the figures.

55. The appellant went on to say that the net rental income he had calculated for the purposes of the appeal hearing was £1,996. He gave no cogent explanation as to how that figure was arrived at and provided no supporting evidence, other than to suggest
30 that it was derived from Mrs Aitken's analysis of the Halifax account.

56. The Halifax account included various cheque deposits of £266 which were rental income. It also included expenditure for insurance, newspaper adverts, water bills, TV licence fees and council tax.

57. The appellant maintained that the Halifax account related to the rental
35 properties. Rent cheques were paid into the account and allowable expenditure was made from the account. Prior to the hearing Mrs Aitken had not been told this was the case. As far as allowable expenditure is concerned she was content to take at face value the sums claimed in the 2005-06 tax return.

58. Whilst the Halifax account does appear to have been used in relation to the rental properties, it was not used exclusively as such. For example there appear to be motoring expenses and payments in respect of holidays paid from this account. There was also at least one significant payment in connection with the newsagent business to W H Smith Trading. The appellant also paid cheques and cash from rentals into the Barclays savings account and into another Halifax current account.

59. In relation to his banking the appellant told us that he was keen to manage his resources to his best advantage. In particular he was apparently keen to avoid bank charges. That sits uneasily with keeping £8-10,000 in cash at home when it could have been earning interest if placed in the Barclays Openplan savings account.

60. No documentation to support what the appellant claims as allowable expenditure has been produced. Indeed no documentation whatsoever has been produced in relation to the rental properties. We have seen no tenancy or licence agreements and no invoices for expenditure. When asked what information he gave to Cottons to prepare his tax returns the appellant seemed reluctant to answer the question. He simply said that he told them what the income was. He hadn't kept records therefore he just gave them the figures from his own memory. If that is right, in contrast markedly with his record keeping in relation to the shop where there were apparently detailed record systems in place, albeit with primary records in the form of till rolls and z readings being thrown away.

61. The total of all withdrawals from the Halifax account in 2005-06 was £14,230. Those withdrawals were analysed by Mrs Aitken. The appellant did not take issue with her analysis. The £14,230 is made up as follows.

62. Cheque payments amounted to £3,646. There was no evidence to suggest that the cheque withdrawals related to the rental properties, save that there were a small number of round sum amounts which the appellant said were returned deposits.

63. There is no basis for us to draw any conclusion as to the balance of £10,584. From Mrs Aitken's analysis it includes various items such as insurance, newspaper adverts and utility bills. We accept that some of this expenditure related to the rental properties but some of it clearly did not.

64. We found it surprising that the appellant made no attempt to identify what expenditure in the Halifax account related to the rental properties, or to identify which rental property the expenditure related to. We accept that there must have been allowable expenditure. The best we can do is to treat as allowable expenditure the amounts claimed in the appellant's tax return for 2005-06 prepared by Cottons. That was the approach taken by Mrs Aitken.

65. Based on the evidence we cannot be satisfied that the amount claimed as expenditure in the 2005-06 return was understated, as suggested by the appellant. In any event, even if that expenditure is understated the shortfall in income would remain the same.

Decision and Reasons

66. There was no dispute in relation to the relevant law.

67. The assessments in this case were made on 22 December 2012. In so far as they relate to years of assessment ending more than 6 years earlier, HMRC must establish that they involve a loss of tax brought about deliberately by the appellant (section 36 Taxes Management Act 1970). To that extent, the burden is on HMRC to establish that the appellant deliberately understated his liability to income tax in his self-assessment returns.

68. The penalties were determined by Mrs Aitken pursuant to section 95(1)(a) Taxes Management Act 1970 for fraudulently or negligently delivering incorrect returns. It was only necessary for HMRC to establish that the returns were delivered negligently to engage the penalty provisions. The thrust of HMRC's case however was that the appellant deliberately delivered incorrect returns.

69. In the light of our findings of fact we are satisfied that the appellant failed to declare all the profits of the shop and the rental properties. We have concluded on the balance of probabilities that he did so deliberately with a view to evading tax. We do not accept the appellant's explanation of the shortfall in income. Nor do we accept that his failure to maintain records was an innocent failure. We reach these conclusions on the basis of inferences drawn from our findings of fact set out above and on the totality of the evidence before us. The following facts and matters are particularly relevant in reaching our conclusions:

(1) There was a large unexplained shortfall in known income available to meet the appellant's private expenditure in 2005-06. The shortfall was some £17,559 which is a very significant sum in the context of the appellant's finances.

(2) The appellant maintained that Bupinder and Herdial contributed significantly to the household expenditure in 2005-06. We have found that they did not.

(3) The appellant deliberately destroyed primary records of the shop takings. He is an intelligent man, and must have realised that such records ought to have been maintained.

(4) For the reasons given above, the appellant's evidence as to cash held in the house and potentially available for private expenditure was not credible. There was no reason not to pay the sum of £8-10,000 into the Barclays savings account. The appellant accepted that he intended to do so. He had no credible reason not to do so.

(5) The appellant failed to maintain any records whatsoever of his rental income and expenditure. He was aware from at least 2002 that he was required to make a return of his rental income and expenditure. He must have realised that such records ought to be maintained.

(6) The appellant failed to put forward any figures for rental income or expenditure. His figure for net rental income of £1,996 was not substantiated or explained. He was reluctant to say how he obtained the figures provided to

Cottons which were used in the 2005-06 return and in the end gave no credible explanation.

70. Mr Cannon maintained that Mrs Aitken ought to have carried out a mark up exercise rather than an analysis of private income and expenditure. He asserted that if she had done so then the undeclared takings calculated by reference to her analysis of private income and expenditure would have implied a gross margin of 1,300%.

71. We accept that a mark up exercise might have been an option open to Mrs Aitken, but we do not consider that she can be criticised for taking the approach she did. She took the view that she could not be satisfied that the purchase records were complete. She was entitled to take that view. The evidence before us did not establish what the results of a mark up exercise might have been. We cannot therefore say by reference to Mr Cannon's assertion that Mrs Aitken's estimate of undeclared income was unrealistic.

72. The assessments for years other than 2005-06 were made by reference to the results for 2005-06. In particular, the understated income calculated for 2005-06 was adjusted by reference to changes in the retail prices index.

73. Mr Cannon submitted that this approach was unreasonable given changes in the circumstances of the business. In particular he relied on the introduction of a large Tesco supermarket in about 2007, the closure of a close competitor in 2007 and the move to new premises in 2009.

74. Mrs Aitken's use of RPI assumes that the appellant suppressed his profits broadly at the same level throughout the years assessed, taking into account the effect of inflation. We do not consider that the changes referred to by Mr Cannon affect that assumption. Indeed the move to new premises occurred after the last period assessed.

75. Mrs Aitken accepted that the shortfall in income she had identified should be reduced from £21,497 to £17,559. The appeal must therefore be allowed to that extent. The effect this has on the assessment of undeclared shop takings is as follows:

	£
Shortfall in Income	17,559
Undeclared Rental Income	(10,241)

Undeclared Shop Takings	£7,318
	=====

76. Mrs Newham calculated the additional tax and national insurance due following this adjustment. Mr Cannon did not take issue with these figures, save in relation to his submissions on the evidence that there had been no understatement of income. We find that the assessments and penalties should therefore be reduced as follows to reflect the reduction in the income deficit:

Tax Year	Adjusted Additional Tax £	Adjusted Penalty £
1999-00	2,334.28	1,401
2000-01	1,869.44	1,122
2001-02	1,897.47	1,138
2002-03	1,957.09	1,174
2003-04	311.09	187
2004-05	4,230.19	2,538
2005-06	3,790.27	2,274
2006-07	5,650.23	3,390
2007-08	7,510.16	4,506
Total:	29,568	17,730

77. HMRC have assessed undeclared profits from the shop from 1999-00 to 2007-08. They have assessed undeclared rental income from 2004-05 because the information from which estimated occupancy levels was only available from that tax year. The approach in relation to rental income is beneficial to the appellant and we do not propose to interfere with it.

78. Mr Cannon submitted that the assessments were based on invalid assumptions. It is undoubtedly the case that Mrs Aitken used various assumptions in making her assessments. The need to make assumptions resulted from the simple fact that the appellant had failed to maintain adequate records either for the shop business or for the rental properties. In relation to the shop business the appellant destroyed the primary records of income, the till rolls and z readings. In relation to the rental properties, no records whatsoever were maintained.

79. Mr Cannon did not make any submissions as to the rate at which the penalties were calculated. We are satisfied that penalties are due for the reasons given above. We are also satisfied that the penalties should be calculated at the rate of 60% of the additional tax.

Conclusion

80. Subject to the adjustments set out above, HMRC were entitled to amend the appellant's self-assessment for 2005-06, to make assessments for the other tax years and to impose penalties for all tax years. To the extent of the adjustments the appeal is partly allowed, but otherwise dismissed.

81. 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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**JONATHAN CANNAN
TRIBUNAL JUDGE**

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RELEASE DATE: 21 October 2014