



TC04267

Appeal number: TC/2014/00086

*INCOME TAX –failure to keep accurate records - discovery assessments-
additional capital gains tax- section 95and schedule 24penalties- non
attendance of appellant-appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MASOUD MIRSAMADI

Appellant

- and -

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

**TRIBUNAL: JUDGE BARBARA KING
MR JOHN WOODMAN**

Sitting in public at North Shields on 14 January 2015

The Appellant did not attend

Rosalind Oliver, of HM Revenue and Customs, for the Respondents

DECISION

1. The Tribunal decided to proceed with the hearing of this appeal in the absence
5 of the appellant or his representatives. We took into account the following matters:-

(1) Notification of today's hearing had been sent on 7 November 2014 to Chuhan and Singh, chartered accountants who had been authorised to conduct the appeal on behalf of the appellant.

10 (2) Chuhan and Singh wrote a letter dated 8 January 2015 which was received by HM Courts and Tribunals service (HMCTS) on 13 January 2015, the day before this hearing, asking for a postponement of three months because "the wife of the appellant has been diagnosed with breast cancer and the treatment has been ongoing, causing the appellant to be distracted from all other matters." The documentation which accompanied that letter gave no confirmation as to
15 when or whether that diagnosis had been made. There was no confirmation of any medical appointments after August 2014.

(3) Following the application for a postponement, HMCTS informed Chuhan and Singh that the application for postponement had been refused and the hearing would take place on 14 January 2015. The letter from HMCTS was
20 emailed to Chuhan and Singh and to HMRC on 13 January 2015.

(4) Mrs Oliver of HMRC confirmed that she had received the email from HMCTS on 13 January 2015.

(5) Since the directions in this appeal given on 2 July 2014, no skeleton argument had been submitted by the appellant and no further documents have
25 been submitted.

(6) HMRC have produced a bundle of all the documents which have been submitted by the appellant including a letter from Chuhan and Singh dated 24 April 2014 indicating that the appellant is insolvent.

(7) A further letter was received by HMRC from Chuhan and Singh dated 1
30 October 2014 asking that any appeal hearing be postponed for 90 days from the date of that letter. There are more than 90 days between 1 October 2014 and 14 January 2015.

2. The Tribunal was satisfied that the appellant had been notified of today's
35 hearing. We went on to consider rule 33 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 as to whether it was in the interests of justice to proceed with the hearing in the absence of the appellant. We considered that the closure notices and discovery notices in this case had been issued in August 2013 and the appellant had had ample opportunity to produce any further documentation or
40 argument he wished. We had available to us all the documentation which had been produced. The decisions which are under appeal relate back to tax years 2004-05 through to 2011-12. We find that any illness by a family member in 2014 will not have prevented the appellant from keeping accurate records in the years from 2004

to2012. Where documentation is missing we find that it is unlikely that the appellant's memory of events is likely to improve as time progresses

3. We considered that if the appellant's wife has been suffering from breast cancer for some time, the appellant has had ample opportunity to inform HMCTS well before six days before the hearing.

4. Chuhan and Singh are on the record as the representatives of the appellant. If the appellant still intended that they would represent him at any hearing, the illness of the appellant's wife they should not have prevented them from appearing before the Tribunal to put forward any further argument on his behalf.

5. Taking all of the above into account we found that it was in the interests of justice to proceed in the absence of the appellant.

The Issue

6. The appeal is against Discovery Assessments in respect of the years 2004-05, 2005-06, 2006-07 and Closure notices for years 2007-08, 2008-09, 2010-11 and 2011-12. All of these were issued on 1 August 2013. HMRC have found that additional tax, and penalties are due in respect of all these years.

The amounts are as follows:-

Year	s 9A Enquiry	Closure Notice	Discovery Assessment	Additions to Income Tax Capital gain	Additional TAX & NIC	S95 Penalty	Schedule 24 penalty
2004-05			1.8.13	£29,489			
				£40,825 capital gain	£25,019.94	£17,514	
2005-06			1.8.13	£30,288	£8,882.72	£6,218	
2006-07			1.8.13	£33,196	£9,832.48	£6,883	
2007-08	9.1.09	1.8.13		£41,753	£13,091.23	£9,164	
2008-09	9.5.13	1.8.13		£29,526	£8,353.28		£7,309.12
2009-10	9.5.13	1.8.13		£22,529	£6,308.12		£5,519.60
2010-11	9.5.13	1.8.13		£23,404	£6,924.72		£6,059.13
2011-12	9.5.13	1.8.13		£27,634	£8,981.66		£7,858.95

7. The appeal was submitted late but the respondents HMRC had no objection to time being extended and the appeal is admitted. The main ground of appeal is that the appellant states that he has never had the figures of income now calculated by HMRC.

Background

8. On 29 January 2009 the appellant filed his Self Assessment Tax Return for the year 2007-08. This showed Income from UK land and property at £6716. No other income was declared. HMRC opened an enquiry under section 9A TMA and there then followed three years during which the appellant did not provide all the information requested by HMRC. Several penalties were issued for failure to comply with information notices.
9. Chuhan and Singh were appointed to act for the appellant in June 2012 and a meeting was then held on 20 November 2012.
10. At the meeting information was produced about various properties which had been owned by the appellant in the previous five years. Various takeaway businesses were also mentioned. HMRC had information that the appellant had been the trader at these premises. The appellant stated that, at times he had been in partnership or that he had disposed of the businesses to another. Rental and/ or business income for all these premises had not been declared on the appellant's tax returns. The appellant gave contradictory information about what trade had been carried on at these premises and who had been carrying on such trade. Bank details showed unidentified bank deposits. A property at 7 Blackwellgate Darlington had been sold in 2004 and no capital gains tax had been paid on the gain.
11. The appellant agreed that he had failed to keep proper records and that he would have additional tax to pay.
12. In January 2013 the appellant filed outstanding tax returns for the years 2008-09 through to 2011-12. The figures in these returns were estimated.
13. On 25 April 2013 HMRC calculated that there was a shortfall in the income which the appellant would have needed to maintain himself, his two young children and a new wife in the year 2007-08. In view of the lack of accurate and complete information from the appellant, HMRC used the Office of National Statistic's Living Cost and Food Survey (LCF) to calculate the family's expenditure. The calculation was based on the premise that the expenditure of the appellant and his family was in the lowest 20% in the country for the purposes of calculating how much they spent on food and fuel. The figures for actual expenditure on other items such as mortgage, council tax, flights, insurance, Sky contract, private school fees and gym membership were used. The calculation resulted in expenditure exceeding known income by £41,753.20.
14. The Retail Price Index was used to calculate how much the appellant needed to live in earlier years.
15. HMRC made the presumption that the pattern of failing to declare full income had begun in earlier years and persisted throughout the years in question. This resulted in the figures for additional income shown in the table in paragraph 6 above.

Discussion and findings.

16. The appellant agreed that he had not kept accurate records. We find that he negligently made incorrect returns for the years 2004-05 to 2007-09. He then deliberately concealed his correct income and made incorrect returns for the years
5 2008-09 through to 2011-12.

17. In the absence of accurate records HMRC have calculated what was likely to have been the income and expenditure of the appellant. We find that the method of calculating the income of the appellant in the years in question has been carried out in a reasonable way. The onus of showing that more accurate figures are available lies
10 on the appellant

18. The evidence produced by the appellant was incomplete and contradictory. He has stated that he had additional money to support his lifestyle from mortgages', loans and sales of businesses. We found that there was insufficient evidence to support these assertions.

15 19. On balance we found that at the time the assessments were carried out by HMRC they took into account all the information available to them and made reasonable estimates where actual figures were not available. We find that the appellant has not shown that any other estimates are likely to have been more accurate. He has not produced any other actual figures.

20 20. We find that the appellant has not discharged the burden of displacing the assessments and amendments by HMRC.

Penalties

21. For the years 2004- 05 through to 2007-08 the penalties are considered under s 95 TMA. The maximum penalty can be 100% of the additional duty and HMRC have
25 considered mitigation of the penalty under the headings of disclosure, co-operation and seriousness. They have allowed 0% for disclosure, 20% for co-operation and 10% for seriousness. We find that the mitigation is appropriate.

22. The overall mitigation applied by HMRC is therefore 30% which means that the penalty is applied at 70%. The table in paragraph 6 shows the penalty for each year.
30 The total additional tax due for the years 2004-05 to 2007-08 is £56,826.38 and 70% of this comes to £39,778.46.

23. For the years 2008-09 through to 2011-12 the penalties are considered under schedule 24 Finance Act 2007. We agree with the findings of HMRC that the appellant's behaviour was deliberate and concealed and that he had to be prompted to
35 make a disclosure of any inaccuracy in his tax returns. We agree that there should be no mitigation for telling. The appellant has provided some scant information and the penalty can be mitigated by 10% for helping and 15% for giving.

24. The appeal is dismissed and the figures for additional tax due and penalties as set out in the table in paragraph six above are confirmed.

25. 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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**BARBARA KING
TRIBUNAL JUDGE**

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RELEASE DATE: 3 February 2015