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TC04414

Appeal number: TC/2014/0346

10 **INCOME TAX:** *alleged suppression of takings – cash takings inconsistent with debit/credit card receipts – assessments to additional income tax/NIC – evidence adduced at the hearing as to particular features of the Appellant’s business (limousine hire); appeal allowed.*

15 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

PETER N JACKSON

Appellant

- and -

**THE COMMISSIONERS FOR HERMAJESTY’S Respondents
REVENUE & CUSTOMS**

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**TRIBUNAL: JUDGE CHRISTOPHER HACKING
CHRISTINE OWEN**

Sitting in public at Manchester on 24 February 2015

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Mr Jackson, the Appellant, appeared in person

Mrs Susanne Whitley-Bennion, a Case Presentation Officer, appeared for the Respondents.

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DECISION

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1. This appeal relates to assessments in respect of tax and National Insurance contributions for the tax years 2010-2011 and 2011-2012 together with penalties imposed in respect of under-declarations of earnings in those years by the Appellant.

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2. Mr Jackson is a sole trader who hires out vehicles under the trading style "A1 Limousines" from business premises at Jackson Farm, Pilsworth Road, Bury.

The Respondents' case

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3. On 1 November 2012 HMRC opened an enquiry into Mr Jackson's 2011-2012 tax return under section 9A Taxes Management Act 1970.

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4. Business records were provided by Mr Jackson and his accountant and subsequently some five meetings were held to discuss the concerns raised by the Respondents as to the accuracy of the Appellant's returns.

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5. The main issue identified by the Respondents was the low ratio of cash to card payments - £900 and £10,323 respectively

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6. This apparent disparity appeared to the investigating inspector, Mr A P McLeod, to be at odds with the Appellant's terms and conditions which appeared on his website which stated:

"..all bookings are by pre-booking only and must be confirmed within seven days with a non-refundable deposit of not less than £50 before it is accepted as a positive booking. All balance payments must be made either 7 days before it is accepted as a positive booking or CASH on the day/night. CHEQUES WILL NOT BE ACCEPTED ON THE DAY/NIGHT"

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7. On 20 February 2013 the inspector wrote to Mr Jackson's accountant, Mr Lowther, providing his calculation of sales/profit understated in the sum of £8,298. In doing so he stated:

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"The cash income recorded in the Evrite book [*the book kept by the Appellant's father in which all income of the business was said to have been recorded*] is inconsistent with the number of deposits taken by credit/debit card. For that reason I believe the sales figures in the accounts to 5 April 2012 is significantly understated. As your client does not appear to have any documentation which could be used to determine the true turnover figure I have prepared a calculation based on the credit/debit slips submitted with the business records. This is enclosed for your consideration/comments

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Sales calculation:

Total number of card transactions in year

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	Number of £50 payments by card	86
	Number of other payments by card	39
	Estimated number of jobs where deposit only is taken	6
	Minimum number of jobs fulfilled	119
5	Estimated number of jobs where card payment made in full	10
	Total number of jobs	129
	Estimated average price per job	£175
	Sales = 129 jobs x £175 per job =	22,575
10	Total sales per accounts to 5/4/2012	<u>14,277</u>
	Calculated understatement of sales / profit	£8,298"

8. The Respondents also enquired into two commission payments totalling £825 received by the Appellant from "Direct Accident" which had been omitted from his accounts and subsequently sought information about other commission payments from Direct Accident which may have been paid to the Appellant. An Information Notice was sent to the Appellant on 21 August 2013 requesting the source of bank deposits to his RBS bank account and details of all "Direct Accident" commissions paid. It was agreed by Mr Jackson's accountant that this money should appear as "other income" in Mr Jackson's business accounts. The focus of this appeal and the assessments raised however concern the under-declaration of sales said by the Respondents to have occurred.

9. Because Mr Lowther had become ill it was necessary for Mr Jackson to appoint another accountant, Mr James Scott, with whom the inspector met on 22 October 2013.

10. It appears that at that meeting Mr Scott agreed that certain mileage figures for the vehicle/s used and associated costs proposed by the inspector appeared to be more likely than those which his client had indicated.

11. The Figure of 5377 miles (adopted by the inspector from his examination of the MOT certificates produced by Mr Jackson) at an assumed average journey speed of 21.6 mph gave a travelling time of 248 hours which, with total sales of £14,277 as recorded by the Appellant, would produce an average hourly charge of £57.

12. Mr Scott had undertaken some research and had found that limousine hire started at around £120 per hour. Wedding car hire was more expensive. The inspector said that he proposed to apply a job rate of £175 on the credit/debit card values he had seen. He also advised that the only rate advertised by Mr Jackson on his website was for trips to the Blackpool Illuminations starting at £185 for the 3 hour round trip.

13. Having received the 2012-2013 cash book, for which he had previously asked but not received, the inspector counted the income entered and formed the view that as the mileage for 2011-2012 and 2012-2013 was 5377 and 3692 respectively then "all things being equal" the cash book did not record all income received and maintained. His view was that the 2011-2012 sales figure was significantly understated.

14. It appears that Mr Scott acknowledged that this now looked to be the case. It should perhaps be made clear that Mr Jackson was not present at this meeting.

5 15. The inspector said that there had been a noticeable fall in Mr Jackson's profits during the time Mr Jackson's previous accountant had been acting. The inspector explained his earlier calculation of sales/profit understated and proposed the addition for tax year 2011-2012 should be £8854 and for 2010-2011 £7732. Details of previous turnover figures and proposed additions were as follows:

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31/08/2008	£54,053
31/08/2009	£52,323
31/08/2010	£31,575
31/08/2011	£15,309 add £7732 (£8,000 using RPI scale back
15 31/08/2012	£14,277 add £8854 (includes £854 commission)

16. The Inspector wrote formally to Mr Scott's accounting firm on 23 October 2013 requesting agreement to the proposed profit adjustments. Mr Jackson met with Mr Scott to discuss this. Mr Jackson did not agree the proposals. Mr Scott e-mailed the inspector advising that his client did not accept the proposed figures and would supply further information which the Respondents say he has not done.

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17. Following what appears to have been further requests made both through Mr Scott and directly to Mr Jackson seeking further information and there having been no response, assessments were raised as follows:

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Tax year 2010	Additional (revised) tax/NIC	£1986.30
Tax year 2011	Additional (revised) tax/NIC	£1590.80
30 Penalty 2010		£903.77
Penalty 2010		<u>£723.80</u>
		£5204.67 (rounded to £5204.70)

It is this sum, £5204.70 which is the subject of this appeal.

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The Appellant's case

18. Mr Jackson's Notice of Appeal states his reasons for appealing by reference to a letter attached which includes the following:

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45 "Phil McCloud, (*sic*) Investigating Officer for HMRC, is not willing to understand the operation of my business, nor my actual takings. He is overestimating exactly what I earned in the years 2010-2011 and 2011-2012. Thus creating a false negative shortfall for payment of income tax. In my opinion, Mr McCloud's calculation is solely summed up on assumption. He in fact altered my Tax returns to accommodate his over estimations.

I have given HMRC every opportunity to calculate this investigation with the facts I presented to them. However this was overlooked and they estimated my tax bill without sufficient evidence to prove that I earned what they say I have.”

5 *The evidence*

19. The Respondents’ evidence was presented by reference to the notes of the five meetings which took place between, variously Mr McCleod, Mr Lowther, Mr Jackson, Mr Jackson Senior and Mr Taylor and relevant documentation including a spreadsheet prepared by Mr McLeod showing details of the receipt of credit card payments by Mr Jackson in connection with his business noting the expiry dates of credit cards used and the number of days between deposit payment and card expiry.

20. Mr McLeod had provided a written witness statement in which he details his enquiries as above and explains how he calculated the additional tax/NIC due.

21. Much of that evidence concerned the calculation of likely turnover by reference to assumptions as to distances travelled, fuel used, time taken and speed of travel. There did not appear to be very much said about the nature of the business itself.

22. It was clear to the tribunal from the evidence given by Mr McLeod that the basis for his belief that Mr Jackson had understated his business’s income derives essentially from an assumption that, as stated in Mr McCleod’s letter of 20 February 2013 to Mr Lowther:

“The cash income recorded in the Evrite book is inconsistent with the number of deposits taken by credit/debit card. For this reason I believe the figure in the accounts to 5 April 2012 is significantly understated”

23. It was for this reason that Mr McLeod had analysed the credit/debit card payments. He told the tribunal that where he saw a £50 he believed that that was most likely to be a deposit which would then need to be followed by a balance payment. He had been largely unable to detect these payments which he then assumed to have been paid in cash so as to produce what he considered to be a more realistic ratio between cash and card payments.

24. Further assumptions concerning mileages travelled, speed of travel and so forth appeared to support Mr McLeod’s basic belief as to the understatement of income.

25. Mr Jackson gave evidence to the tribunal as did his father.

26. Mr Jackson Senior told the tribunal that he was his son’s bookkeeper. He wrote the books up every weekend from the records passed to him by his son and included all payments made, whether cash or by card. Mr McCleod agreed that cash payments of £900 had been recorded by the business in the year 2011-2012 as shown in the hearing bundle. Mr McCleod had noted that these payments were always for £50 or multiples of this sum (£100 or £150). The record shows that cash outgoings exceeded

cash received by £145.66 over the year. It was accepted by Mr Jackson that he had drawn some cash from his rent receipts account for business purposes.

27. Cash was recorded by the Appellant in the form of a scrap of paper which was handed to his father. Mr McLeod told the tribunal that cash was balanced every week but not with the cash on hand by which the tribunal understood that there was no full reconciliation of cash banked and on-hand with the records of cash received and paid out so that the scraps of paper together with copies of receipts for items paid out by way of cash were reconciled with the book entries to produce a cash carried forward figure. The “scraps of paper” were thrown away and had not been seen by the inspector.

28. Mr Jackson did not retain the Streamline records of card payments as he said that this was not acceptable for security reasons. The booking forms also were destroyed after the bookkeeping entries had been entered up by Mr Jackson Senior.

29. In his evidence to the tribunal Mr Jackson explained how, with increasing frequency, payment for the hire of his vehicles was made. Many of the jobs were young people in a group going out to graduation balls/proms or young ladies on a “hen night” out. The £50 booking fee was generally paid by a credit/debit card but the balance was often provided by the passengers offering several cards at the conclusion of the evening. Mr Jackson would enter these into the Streamline system back at his office later that night/early morning as he had no facility for taking card payments remotely from the Streamline system in his office. That is why the basic assumption made by Mr McCleod about a shortage of cash in the business was, said Mr Jackson, wrong. His was mainly a card payment business.

30. Mr Jackson also told the tribunal that the assumption underlying the calculation of the supposed under-declaration of takings namely that there was a direct relationship between the recorded miles travelled and takings/profit was also wrong.

31. There were several reasons for this which related to the particular characteristics of a limousine hire business, particularly one such as the Appellant’s which was operated in a highly competitive environment.

32. The single limousine (a Lincoln Town Car) was on occasion used to convey family and friends and to provide a treat for nephews and nieces. On those occasions no charge was made but the passengers paid for the fuel.

33. Counter-intuitively the longer paid-for journeys did not always produce more money than local jobs. This was because journeys such as the trip to Manchester for customers going out for a night had to meet competitors’ rates even where this produced only a small profit. Local jobs frequently paid more and cost less. The longer jobs were generally booked on a one-way basis so as to avoid the additional cost to the customer of waiting time which could be considerable if a long night out was anticipated. This meant however that the return journey involved a cost which had to be taken into account and which again reduced the profit.

34. Mr Jackson said that he charged £200 for school “proms” and explained his charge for a Blackpool visit at £185 as including 3 hours working at £48.33 plus fuel.

5 35. Another factor which emerged from Mr Jackson’s evidence and which the inspector may not have appreciated, was the very small use made of the wedding car which was not in fact owned by Mr Jackson but was lent to him by a friend. The fact that nearly all of the work was done with the limousine and the increasingly competitive nature of the business explained the drop in income over the past years. Mr Jackson explained that he was not wholly dependent on income from the business as his family were in receipt of disability benefits. The business had been declining for some time.

15 36. The Respondents case was that there had been what appeared to be an unexplained drop in takings which could well account for the suppression of cash. In fact, said Mr Jackson, the business had operated 3 vehicles in 2008 but this had dropped to two only, including the wedding car. However, the wedding car element of the business was, said Mr Jackson, a “red herring” for the reasons mentioned in the preceding paragraph.

20 37. Mr Jackson Senior in his evidence to the tribunal said that he had tried to explain these issues to the accountant but that this does not appear to have been taken into account by HMRC.

The tribunal’s consideration of this appeal

25 38. Having listened to the evidence and reviewed the appeal bundle the tribunal has been struck by the fact that only during the hearing did a reasonable explanation for the Appellant’s objections to the Respondents’ assessments emerge.

30 39. Mr Jackson did strike the tribunal as an honest, if somewhat overconfident, young man. We accepted also the evidence of Mr Jackson’s father that he booked all of the business’s cash receipts. In short we do not believe that this was a case involving the suppression of cash takings as alleged by the Respondents. There is no banking or other evidence to support this.

35 40. We have every sympathy however with the Respondents’ position as we find it difficult to accept that Mr Jackson could not have explained to Mr McLeod the matters he raised in the tribunal hearing. Regrettably this would appear to be yet another situation in which, for some reason, the parties appear not to have been able to communicate fully. Whilst we accept that Mr Jackson did have problems arising as a result of the serious illness of his first accountant it seems that relations with the second accountant may not have been as felicitous as one might wish following his apparent acceptance of figures clearly disputed by Mr Jackson.

45 41. We are also bound to say that Mr Jackson’s bookkeeping system falls very far short of what is acceptable. To throw away primary records such as the “scraps” of paper recording cash receipts and some evidence of the payments by card is quite

5 simply inviting problems in the event of an enquiry. It could not be difficult in a
business such as this to make use of a client numbering system for the primary
records by which all payments whether by cash or card could be readily identified. In
particular there was no reason why Mr Jackson could not have explained to Mr
McCleod that the way in which he operated was in conflict with his stated terms of
business

10 42. For these shortcomings Mr Jackson has only himself to blame for the
difficulties which ensued.

15 43. We accept that Mr McLeod did his best to afford Mr Jackson the opportunity
to explain more carefully why it was that his underlying assumptions both as to the
correlation of cash payments to those made by credit/debit card and more generally as
to the economics of the business might not be correct.

15 *Decision*

20 44. However, because we do accept, for the reasons set out above, that Mr Jackson
has not been engaged in failing to correctly state the income of his business we allow
this appeal and direct the discharge of the assessments and penalties.

25 45. 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

30 **CHRISTOPHER HACKING**
TRIBUNAL JUDGE

35 **RELEASE DATE: 13 May 2015**

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