



**TC02785**

**Appeal number: TC/2012/07297**

*Capital gains tax – disposal of two properties – agent’s figures did not provide a deduction for property improvements – no details forthcoming – bank account shows numerous withdrawals for the period prior to sales – Appellant cannot provide details of what expenditure incurred – impossible to conclude how much expenditure incurred – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**TOBIAS RIDPATH**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE JUDITH POWELL  
MR DUNCAN MCBRIDE**

**Sitting in public at Bedford Square, London on 12 February 2013**

**Mr Melvyn Dubell, Dubell and Co. Chartered Accountants for the Appellant**

**Mr William Kelly, Tribunal Caseworker, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal against an assessment for 2004/05 for capital gains tax payable  
5 in respect of a capital gain realised by the Appellant on the disposal of two properties.  
The only point in issue for this appeal concerns the expenditure allowed in calculating  
the chargeable gain. The Appellant says that the computation prepared by his  
accountant, and on which the assessment was based, failed to take into account  
expenditure incurred on the properties during his period of ownership. The  
10 Respondents say there is insufficient evidence of expenditure.

2. Three initial points arose. The first concerning proposed evidence of a person  
described by the Appellant not as an expert but as a person who might say (without  
having been personally involved) that what the Appellant said was done was likely to  
have been done and the likely cost involved. The Appellant acknowledged that this  
15 person had not seen the properties at the time of their purchase and after discussion he  
decided not to call him as a witness. The second point involved the calculation of a  
penalty which is not the subject of the appeal. The Respondents explained that this  
penalty had been issued on the Thursday prior to the hearing and was not the subject  
of the present appeal but because the penalty was a tax based penalty its amount  
20 might be influenced by the outcome of this appeal which is against the amount of tax  
relevant to the penalty calculation. Thirdly the Respondents confirmed they had no  
objection to the fact the notice of appeal in this case was late.

### **The facts**

3. The Appellant did not make a Self Assessment Tax Return for 2004/05 and Mr  
25 Ian Catterall, a compliance officer with HMRC was given responsibility to undertake  
a compliance check into the Appellant's affairs and determine whether he had any  
additional taxes to pay for that year. Following several unsuccessful attempts to  
make contact with the Appellant, Mr Catterall spoke to him on 27 October 2010 and  
was referred by the Appellant to his accountant, Mr Chris Roberts, who it turned out  
30 was not acting for the Appellant for the 2004/05 tax year but undertook to make  
enquiries and do his best to prepare computations for that year. After some further  
prompting Mr Roberts advised Mr Catterall on 25 November 2010 that he had  
obtained purchase and sale details of a property at 353 London Road St Leonards on  
Sea ("London Road") and that he was waiting for details of refurbishment costs.

35 4. There were further delays caused by a failure on the part of the Appellant to  
provide information and eventually, in a telephone call between Mr Roberts and Mr  
Catterall on 16 March 2011 it transpired that a further property had been disposed of  
in 2004/05. The address of this property was 348a Coldharbour Lane London SW8  
("Coldharbour Lane"). Mr Roberts agreed he would include both properties in his  
40 capital gains summary for 2004/05. This summary was provided by Mr Roberts  
under cover of a letter dated 17 March 2011 to Mr Catterall. The summary showed a  
tapered gain of £93,889 for Coldharbour Lane (based on a disposal price of £197,500)  
and of £18,862 for London Road (based on a disposal price of £249,999). Total tax  
for these gains was calculated by Mr Roberts at £38,369.80. Apart from estate

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agent's and solicitor's fees and stamp duty and land registry fees, an amount described in each case as "allowed expenditure" of £80,000 was claimed for Coldharbour Lane and £223,000 for London Road. Each of these two amounts represent the original purchase price for the properties.

5 5. Mr Catterall accepted the figures which had been provided, prepared  
calculations and hoped to achieve a contract settlement on an informal basis which  
would include an amount for interest and penalties. He did not receive an offer to  
settle the matter and when he contacted the accountant he was told that the figures  
were disputed since they failed to take account of expenditure on the properties.  
10 There was no evidence of the original state of the properties. Mr Catterall asked for  
details of the expenditure and despite allowing some time for these details to be sent  
to him he heard nothing substantive and issued formal assessments on 6 October 2011  
including tax on the chargeable gain realised on the two properties and against which  
this appeal is now brought. The Appellant appealed against the assessment on the  
15 basis that £40,000 had been spent on property improvements which Mr Catterall said  
he interpreted as improvements to the "properties". The Appellant was given time to  
produce evidence of this expenditure but did not do so and in December 2011 Mr  
Catterall wrote confirming his decision and explaining he could ask for a formal  
review. When he heard nothing further he closed his file on 5 January 2012. He then  
20 heard from Mr Dubell asking for an independent review which was carried out and  
upheld his decision.

6. Mr Ridpath told us in evidence about the history of the two properties. The  
basic facts are straightforward. Coldharbour Lane was bought as a "buy to let"  
property in the late 1990s. It was originally a three bedroom flat that he furnished and  
25 rented out and subsequently converted into a four bedroom flat "not expensively"  
before selling it. He described moving a wall and installing a new kitchen and  
bathroom as the main works carried out. When he purchased London Road it was  
divided into studio apartments let to the DSS. The Appellant proved to be uncertain  
about the original number of studio apartments; he originally thought there were eight  
30 or nine but accepted it might have been seven or eight. It was in poor condition and  
he found the DSS lets unsatisfactory and started to convert the property into five one  
bedroom flats. He described this conversion as "not gloriously expensive".  
Apparently he had completed about three quarters of the necessary work when new  
legislation concerning soundproofing made the project more complicated than he had  
35 anticipated and when he received an offer from someone in the adjacent building he  
sold the property to him.

7. The Appellant could not provide any precise evidence about the expenditure  
incurred. He explained that the initial letter from his previous accountant Mr Roberts  
suggesting a figure of £40,000 was too low and may have related to only one of the  
40 properties - Coldharbour Lane – and indeed the accountant only referred to one  
property in the initial correspondence. He explained this by saying that his focus at  
the time had been on Coldharbour Lane because he never imagined he had made any  
money at all on London Road. The Appellant had a bank account in his name  
described as Blue Square Trading. The properties were sold in mid-2004  
45 (Coldharbour Lane) and January 2005 (London Road). We saw bank statements for

5 this account. The opening balance in January 2004 was £121,174.67 and £80,633.98  
was paid in during June 2004 (total £201,808.65). There were numerous cheques  
drawn on the account during 2004 and just a few direct debits in favour of utility  
companies. The balance in December 2004 was £72,988.88 showing withdrawals  
10 made in the year of just over £128,000 the bulk of which was incurred in 2004 and  
£56000 of which was incurred in or before June of that year when the first sale  
(Coldharbour Lane) took place. The Appellant told us that these amounts did not  
relate to personal expenditure and therefore the bulk of what was withdrawn must  
15 have been expenditure incurred on the two properties. He blamed his then  
accountant for failing to claim the expenditure. Unfortunately the Appellant was  
unable to recall how the amounts were spent even when asked about specific  
withdrawals during the relevant period. He had been unable to obtain copies of  
cheques. He had always been self-employed and knew he should keep records. He  
20 thought he might have cheque books at home but did not have them with him at the  
hearing and his accountant had not seen them. The work was done by various  
contractors and he coordinated the work. He employed an architect for the work done  
on London Road but not for the Coldharbour Lane changes. He thought the cost of  
work done on Coldharbour Lane was “about £53,000” and the balance had been spent  
on London Road thereby creating a loss on its disposal.

## 20 **Submissions**

8. Mr Kelly says that it is unrealistic to expect the Tribunal to accept that large  
withdrawals from the Appellant’s bank account “clearly relate” to building work  
where there is no evidence of what the money was spent on, no return made and his  
agent’s computations did not reveal any expenditure at all. The onus is on the  
25 taxpayer to show the expenditure incurred and he has not done so.

9. Mr Dubell says it was unfortunate the Appellant missed submitting one return  
for 2004-05 but that it seems extraordinary that the Appellant could have spent  
£128,000 without spending some money on building work and he invited us to find  
that some reasonable figure had been spent on this work. He accepted that the  
30 Appellant’s book keeping and records were poor and consisted mostly of the bank  
records.

## **Our decision**

10. We can see it is very likely the Appellant incurred some expenditure on the  
properties. The difficulty is that we have no idea how much was spent. We are  
35 invited to find that some or all of the bank withdrawals were used in this way. The  
Appellant was unable to point to a single item and explain by way of illustration how  
the money leaving his account had been spent. Mr Catterall had given him ample  
opportunity to provide evidence of expenditure. Indeed we can see that the Appellant  
was treated very tolerantly by Mr Catterall. We have no idea why the Appellant  
40 was so vague about the expenditure. It is impossible for us to conclude, as Mr Dubell  
invites us to do, that he spent some reasonable figure on these works and then guess  
how much that is - or accept what seems to us equally to be guess work by the  
Appellant about the expenditure. It is very unfortunate that the Appellant was unable

to provide some details of expenses but that was not the case and we have no alternative but to dismiss the appeal.

11. 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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**JUDITH POWELL  
TRIBUNAL JUDGE**

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**RELEASE DATE: 15 July 2013**