



TC03264

Appeal number: TC/2011/08553

Income Tax – did the Appellant work as a taxi driver - estimated assessments for 2006-2007, 2007-2008 and 2008-2009 based on unexplained cash deposits into his bank accounts - Appellant owned car and held license as Private Car driver – car travelled 27,000 miles in 15 month period –Appellant did not show that assessments excessive except that 2006-2007 assessment based on full year rather than part year - Respondents agreed to deduct amounts for fuel and insurance premiums – assessments confirmed in revised amounts and related penalties also confirmed – appeal dismissed subject to these adjustments

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KAMRUL ZAMAN

Appellant

- and -

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

**TRIBUNAL: JUDGE JUDITH POWELL
MRS SUSAN HEWETT OBE**

**Sitting in public at Bedford Square, London on 4 September 2012 and 31
October 2013**

The Appellant appeared in person

**Mr Peter Massey, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

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DECISION

1. This is an appeal against assessments to income tax for the three years 2006 –
5 2007, 2007 – 2008 and 2008 – 2009 and against penalty determinations related to
these assessments based on the failure of the Appellant to make a return of his
income. The Respondents accept that these assessments are estimated but say this is
because they do not have the records they have asked the Appellant to produce and it
is for the Appellant to show they are excessive. They say the Appellant has a motor
10 car and is registered with a Private Car Licence and has made regular and unexplained
cash deposits into his bank account which they conclude represent receipts from his
business activity as a taxi driver (which term we shall use to describe his alleged
activity although we are not sure if that accurately describes a person operating with
such a licence) .

15 2. The Respondents say that if the Tribunal dismisses the Appeal the assessment
for 2006-2007 must be revised since they accept that the Appellant was not in
business until the end of June 2006 and the assessment for that year had been based
on the assumption he was trading throughout the year. The original hearing in
September 2012 was adjourned to give the Appellant time to explain to the
20 Respondents why he had made various deposits into his bank accounts and why the
Respondents were incorrect in assuming they were undeclared receipts of a business
carried on by him as a taxi driver.

3. The Appellant was unfamiliar with the procedure at the Tribunal and had also
engaged the services of an interpreter to translate what was being said. The
25 interpreter at the September hearing was unable to attend the October 2013 hearing
but a replacement was available and attended that hearing; the Appellant had the
services of an interpreter throughout the appeal. Through the interpreter the
Appellant represented himself. It was suggested at the September 2012 hearing, and
the Appellant welcomed the suggestion, that the Respondents explained their case
30 first. Mr Massey from the HMRC Local Compliance Appeals team appeared for the
Respondents.

4. The Respondents did not call any witnesses at the September 2012 hearing. At
the October 2013 hearing the Respondents called Miss Goodrick to explain the history
of the case and the outcome of the meeting she had with the Appellant shortly after
35 the September hearing. Miss Goodrick is a compliance officer whose job it is to look
at cases where the Respondents have received information that a person is not
registered for income tax but has a liability to register. She took over the conduct of
this case from a colleague who died and it was her colleague who had raised the
assessments. It was Miss Goodrick who held a meeting with the Appellant on 8
40 October 2012 following the adjourned September hearing when the Appellant was
given the opportunity to explain the origin of the credits to his bank account and try
and resolve the matter by agreement and without the requirement for the hearing to be
reconvened. Matters could not be resolved at that meeting and so the adjourned
hearing was reconvened.

5. The facts we were able to find are as follows. The Appellant had owned two vehicles but it is the second vehicle which is relevant to this appeal. This second vehicle was a VW Sharan (registration number MX51 DVJ) which is a motor car with seven seats which he acquired on 26 June 2006; this was registered as a taxi car almost immediately afterwards upon payment of the usual fee which is between £115 and £120. The Appellant confirmed that the vehicle was insured and that the insurance premium was about £2,000 pa but he was unable to produce the insurance documents and was unable to remember if it was specifically insured as a taxi. After he registered the car as a taxi he went to work for a company (Beckton and Trevick Cars) which operated a taxi/mini cab office but the Appellant says he was not paid and that he went to them to enhance his skills on what was effectively a training course. Between July 2006 and September 2007 this vehicle travelled some 27,000 miles.

6. During the period covered by the assessments we accept that the Appellant was the sole carer for his mother who had been unwell for a number of years following an operation in 2000. He did not elaborate on the nature of her illness but we accept she needed his help to travel anywhere. Sadly she died in 2011 or 2012 – we do not have the exact date but it was before the September hearing. She was in receipt of benefits and the Appellant received benefits in connection with her needs – for example the Carer's Allowance and income support. The benefits he received were notified to the Respondents after the initial assessments were raised and were then taken into account by the Respondents and the assessments were revised.

7. We accept that the Appellant's mother relied on the Appellant to take her to hospital appointments but we were unable to identify how many appointments she had over the years. She liked to visit relatives and we accept the Appellant was the person who drove her wherever she wished to go. His description of the journeys he went on with his mother did not in our view account for 27,000 miles in a 15 month period. A very rough calculation shows that (assuming that the car was used for the same amount of time each day which we accept is unlikely but illustrates the point we are making about the extent of its use) it would have travelled over 60 miles each day in that period. We find it most unlikely that he drove his disabled mother 27,000 miles in the 15 month period between July 2006 and September 2007 and find that the Appellant must have used the car for other purposes. He did not suggest that he had used it for any other purpose.

8. The Respondents record that the Appellant said at the meeting with HMRC on 7 October 2010 that he had worked about 11 hours a week for the previous three years as a taxi driver in addition to receiving certain benefits such as income support and carer's allowance and was paid £80 per week for his work. The accountant who attended the meeting with him was responsible for forwarding the copy accounts but did not act for the Appellant again after this meeting; apparently the Appellant instructed another accountant who seems not to have undertaken any work for him and confirmed by the time of the September 2012 hearing that he was no longer acting for the Appellant.

9. At the initial hearing and in his appeal documents the Appellant says that the driving he did for Beckton and Trevick Cars was as a volunteer only and he was not paid for this. However, confusingly, in his appeal notice he also implies that he was paid but not in any of the relevant years – he does not record when he was paid but he adds that anything he was paid was entirely used in paying outgoings. He said the account of him working and being paid £80 per week was not correct; he did not deny that he might have said these things but says that was because he does not have a full understanding of the English language. He says he misunderstood what was being asked of him and was confused. We accept that he may not have completely followed what was being said at the meeting but he did have his accountant with him which reduces the likelihood of him inadvertently making statements about matters central to the meeting. He maintained throughout both hearings that he had not worked for reward at any time in the period under appeal. We were not persuaded that this was correct and his explanation that he worked for Beckton and Trevick Cars as a volunteer was not at all convincing.

10. There were a large number of cash deposits made into the Appellant's bank accounts in the period for which statements were provided, that is for the period 6 April 2007 to 5 April 2009. Statements for the bank accounts held by him jointly with his mother were also provided. The Appellant did not provide statements to the Respondents for the period 2006 – 2007. The Appellant explained that the deposits were made out of money given to him by his mother out of withdrawals from the joint account she had with the Appellant.

11. The Appellant's bank accounts showed a number of cash deposits that did not obviously correspond with cash withdrawals from the joint account and the Respondents gave credit for those occasions where the withdrawals for the joint account did correspond with deposits into the Appellant's account. They also gave credit for substantial credits including a transfer relating to a credit card. The withdrawals from the joint account were less than the deposits. The Appellant was unable to explain the source of various deposits where there was no obvious correlation with cash withdrawals from his mother's accounts or otherwise although he did offer several possible explanations. The total amounts (which were individually small) were regular and the total was significant in the context of the whole and so we would have expected him to have a better memory of the source of these amounts than he did.

12. We do accept his general explanation that he thought it would enhance his standing if he made regular deposits into his account but he was not able to explain where all the money to do this came from. One of his explanations was that he had cash at the house – but he could not explain where that cash came from. For example, there were no withdrawals from his mother's account in July 2007 but he deposited £430 into his account in that month. On 25 June he deposited £890 into his account but only £470 was withdrawn from his mother's account. We were unable to find that these, and other, cash deposits were made from cash (unrelated to any business activity) that he had at his house because his explanation about the origin of this cash was confused and vague. We were not persuaded that he borrowed the money in question from friends and family from time to time. Equally we were not

persuaded about his explanation that he had received cash from a relative which enabled him to make cash deposits of £800 and £1000 in July 2007. He was unable to explain the origin of other cash deposited into his account – for example the two deposits of £500 made in June 2008.

5 13. We accept that, on occasion, he borrowed at 0% interest on his credit card
(Barclays Bank, unusually, did offer 0% interest on cash advances) and transferred
this sum into his current account but on at least one occasion this was transferred by
direct credit between accounts and was taken into account (and excluded from
assumed business receipts) by the Respondents in making their assessments. The
10 main reason for adjourning the September 2012 hearing was to give the Appellant an
opportunity to expand upon his explanation put forward at the hearing that most of the
cash deposits could be accounted for by credit card withdrawals and subsequent
deposits into his account. Unfortunately he was not able to do this when he met Miss
Goodrick in October 2012.

15 14. We were unable to identify how the Appellant paid for all the fuel needed to
drive 27,000 miles and he could not explain that to us but some of the credit card
statements examined by Miss Goodrick did show petrol purchases. These were not
originally taken into account by the Respondents in making the assessments but the
Respondents agreed at the hearing that they would do this if the Appellant was
20 unsuccessful in his appeal and they also agreed it would be appropriate to deduct the
cost of insurance which was paid out of his account. This was generous because the
profits of the business, which were the basis of the disputed assessments, were based
on the unexplained cash deposits from which 40% was deducted for expenses – on a
purely estimated basis. The deduction of further amounts from the assessed amounts
25 represent a generous allowance for expenses if the unexplained deposits did originate
from his taxi driving.

15. The Respondents based their assessment for 2006-2007 on the figures estimated
for the following 2007-2008 year which had in turn been based on the unexplained
deposits to the Appellant's bank account. Miss Goodrick had not raised the
30 assessments herself but she was aware that the 2007-2008 and 2008-2009 assessments
were based on the cash deposits made by the Appellant into his account adjusted for
the amounts that corresponded to cash withdrawn from his mother's account. In
making the assessment for 2006 – 2007 the Respondents reduced the 2007 – 2008
assessment by reference to the retail prices index in the absence of any factual
35 information from the Appellant. We have already said that if the Appellant's appeal
is unsuccessful the assessment for 2006 -2007 will be reduced further to reflect that
his business could not have started before June 2006 when he first registered as a taxi
driver and also adjusted to take account of payments for petrol and insurance.

16. The Appellant's case is that he did not work for reward at any time in the years
40 2006-2007, 2007-2008 and 2008-2009. He says the cash deposits were made up of
withdrawals from the joint account, from cash received from various sources
unrelated to any business activity including cash withdrawals using his credit card.
He says that he maintained a Private Car Licence as a safeguard for his future and not
because he used it for business activity.

17. The Respondents say that the Appellant owned a car, this car travelled some 27,000 miles in a 15 month period, the Appellant held a Private Car Licence for the car and had made a number of deposits into his bank account which he was unable to explain as unrelated to any business activity. At some stages in their enquiry, and in particular at the 2010 meeting with Miss Marshall, the Appellant agreed he had worked as a taxi driver and received payment for so doing. They accept the assessments are estimated but say that the Appellant has not discharged his burden of showing that he has been overcharged by the assessments. If the Appellant fails in his appeal to show that he is not chargeable to income tax then they say that he is liable to penalties which were based on the Appellant's failure to notify the Respondents of his chargeability, and the penalty provisions of section 7 Taxes Management Act 1970 apply. The maximum penalty is the amount of tax which was assessed and in this case the Respondents have reduced the maximum by 60% so that the penalty for each year is 40% of the assessed amount.

18. We announced our conclusions at the end of the October 2013 hearing. We found the Appellant's argument that the assessments were excessive was unconvincing. He maintained at the hearing that he did not engage in business at all. We do not accept that. We found his explanation about the previously unexplained cash deposits vague and unhelpful. We gave him the opportunity to elaborate on his explanation that the cash originated from his use of his credit card but he did not do so. We therefore dismissed his appeal against the assessments for 2006-2007, 2007-2008 and 2008-2009 but on the basis that (a) the assessment for 2006-2007 should be adjusted to reflect that he was not in business throughout that year and (b) that all the assessments should be reduced to take account of the previously unidentified petrol purchases as well as the payments of the insurance premiums.

19. After the hearing we were sent revised assessments which we agree reflect these adjustments and we confirm these. We also considered the penalties. We do not intend to disturb the basis on which these penalties have been imposed although of course the amounts (which are based on the assessed amounts) have now been adjusted in line with the revised and confirmed assessments and we now confirm the revised penalties as well. Subject only to these revisions we dismiss the appeal.

20. 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.

**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 22 January 2014