TC04140

Appeal number: TC/2014/00840

Income tax - discovery assessment - error in tax return - Appellant's electronic tax return caused income tax refund - whether error due to carelessness on the part of the Appellant - yes - whether HMRC entitled to raise a discovery assessment - yes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PATRICK JONES **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL S CONNELL
MS REBECCA NEWNS

Sitting in public at 45 Bedford Square London WC1B 3DN on 28 August 2014

The Appellant did not attend and was not represented

Mr S Bentley, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Patrick Jones ('the Appellant') against a Discovery Assessment for the year 2010-11, by HMRC under s.29 TMA 1970, as a result of which additional is tax payable by the Appellant of £3,975.40.

2. The Appellant's original self-assessment showed an overpayment of £4,364.40. The Discovery Assessment reduced the overpayment to £389.40 for the year ending 5 April 2012.

3. The Appellant did not attend the hearing. No prior indication had been given by the Appellant that he would not be attending. The Tribunal was satisfied that the Appellant had been given notice of the time, date and venue of the appeal hearing and that it was in the interests of justice to proceed.

Background facts

4. The Appellant's completed electronic return for 2010-11 was received by HMRC on 26 January 2012. The tax calculation, produced automatically by the system, using the return details entered, showed that the Appellant's total taxable income after expenses and personal allowances was £10,758.00, on which tax was payable (at 20%) of £2,151.60. However, the calculation also showed £6,516 tax already deducted. It is not known how or why tax already paid of £6,516 was shown, because that was incorrect.

5. Based on the (incorrect) information, the automated system calculated that the Appellant had overpaid tax of tax £4,364.40 which was repaid to the Appellant on 30 January 2012. The Appellant did not query the overpayment.

6. However, the Appellant had incorrectly stated his earnings to be £14,000, (representing one half of his annual salary of £28,000), on the basis that he had been employed for only six months of the year. He had overlooked that as at 5 April 2011, his earnings would not have been £14,000.

7. On 17 May 2013 HMRC wrote to the Appellant setting out discrepancies between entries on his self-assessment return and PAYE returns made by his employers and pension providers. The discrepancies were:

		Self Assessment Return	**PAYE Return**	**Difference**
AXA UK Group Pension Scheme	**Pay**	**£5,033**	**£5,811.93**	**£778**

	Tax	**nil**	**nil**	**nil**
Equity Insurance Management Limited	**Pay** **Tax**	**£14,000** **£6,516**	**£7,346.42** **£1,365.40**	**£6,654** **£5,150.60**

8. The Appellant had been employed by Equity Insurance Management Limited between 10 December 2010 and June 2011. On 28 May 2013 he replied saying that, with regard to his Equity Insurance management salary:

> "I received a contract of employment with a yearly salary of £28,000 per annum. On reviewing your letter it appears that I declared all my income for the 6 months I was there and thereby incorrectly overlooked the tax year cut-off date of 1 April. It would appear therefore that I did not earn the amount declared at 1 April but the lesser amount stated, subject to confirmation by my ex-employers."

9. With regard to his Axa Pension, he said:

> "I took the figure of £5,033 from a statement of gross pension to date from Mercer Limited which I believed to cover 12 months pension. It is not clear whether the figure of £5,811 in your letter reflects the tax year cut-off date of 1 April."

10. HMRC wrote to Mr Jones setting out the consequential changes to the return and self-assessment and on 22 August 2013, issued a "discovery" assessment to correct the errors in the return.

11. The Appellant responded that he had made a genuine mistake but that HMRC's 'claim for a refund' was:

> "causing a lot of and stress on myself and my family. Because of the lapse of time since the payment the money has been spent and we do not have that type of cash to pay you back."

The Appellant's contentions

12. So far as relevant to the appeal the Appellant says:

> "Thousands of people were receiving tax refunds so I had no cause to question the refund and thought I was just another person who had received a general tax refund. I am not a tax expert or have any training in that field. However, HMRC are tax experts and as a general member of the public I rely on their expertise to know whether a tax refund is due.

I used HMRC software on line to do the tax return. I relied on the software not being faulty in performing any tax calculations. I believe there must have been some fault with the software producing incorrect figures in my return on this occasion.

Had HMRC exercised proper care using their tax expertise it would have been apparent to them on the basis of the income disclosed that this would not have produced a tax refund of the amount given to me. In the circumstances it is their error that has produced the tax refund.

It is they who took the instant decision to pay out a tax refund and therefore the payment should be considered as a gift which is non-refundable. HMRC could have waited on my employers for verification of taxes or checked the tax calculations properly before making a refund

In view of the lapse of time since the payment was made over 3 years ago it is unreasonable to expect anyone so paid to refund the money.

The claim for interest is disputed; I was not informed or had no reason to think that a claim for refund of the money would be made.

I am advised that the time for this has elapsed but that is the fault of HMRC so I should not be penalised.

I don't know when the employer filed details of my income but it seems that this must have been done in 2010 so HMRC must have been dilatory in reconciling the error in my tax return by only getting back to me in May 2013."

13. The Appellant also says:

"The window of enquiry for reviewing my tax affairs expired under Section TMA 1970. Also, it does not appear that Section 29(3)c has the effect of extending the assessment period under Section 9A of the Act. …. HMRC's Compliance Officer says that …under Section 9A of The Taxes Management Act 1970 HMRC can open an enquiry into a return to check whether it is correct within 12 months of receiving it. In this case I suggest that the time period for such an enquiry had lapsed prior to HMRC contacting me. I first received correspondence from them about this matter on 17th May 2013. In this letter they advised that they received my Self-Assessment return on 26th January 2012 for the tax year ended 5th April 2011. On this evidence HMRC are more than 12 months outside the 'enquiry window' which they themselves admitted was closed on 26th January 2013."

HMRC's contentions

14. HMRC contends that no evidence has been adduced by the Appellant to suggest that the figures provided by his employer and pension provider as shown in PAYE returns are incorrect. It has to be assumed therefore that the figures are the correct amounts of income and PAYE tax paid by the Appellant.

15. In any event the Appellant has not disputed the correctness of figures and in correspondence with HMRC he infers that their calculations are accepted.

16. It is the Appellant, and not HMRC or any other third party, who is responsible for making a return of his income and self-assessing his tax liability. It is also the Appellant, and not HMRC who is responsible for ensuring the accuracy of the return.

17. Before an internet return can be submitted to HMRC it is necessary to "check" (tick) a box next to a statement: "The information I have given on this tax return is correct and complete to the best of my knowledge and belief."

18. There is no statutory requirement for HMRC to check a return before either accepting it or making a repayment.

19. The Appellant is required to keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return. There is an obligation to use those records to complete the return accurately.

20. There is an obligation to check the accuracy of the return before submitting it to HMRC.

21. The errors contained in the self-assessment return have resulted in a loss of tax

22. No specialist tax knowledge is required to maintain and make use of records of income from employments and pensions and the associated PAYE tax.

23. Had the Appellant given the matter any thought before confirming the return was 'correct and complete to the best of his knowledge and belief', it is reasonable to expect that he would have noticed that the information was incorrect. This amounted to careless behaviour on the part of the Appellant.

24. Had the Appellant maintained and made use of adequate records of his pension and employment income and associated PAYE tax it is reasonable to expect that the errors made in the return would not have occurred.

25. The Appellant has produced no documentation to support his assertion that the errors were attributable to software problems.

26. The Appellant's initial response to HMRC, given in a letter dated 28 May 2013, suggests the error was attributable to the wrong figures being entered when the return was completed.

27. It was only after the 22 August 2013 assessment, that the Appellant suggested there was a software problem. The start of the same letter also contradicts this, stating the mistake regarding Equity was a genuine error.

28. HMRC has not made an announcement to the effect that a problem had been identified with corruption of figures on returns submitted by internet around the time the Appellant's return was submitted. If there was a problem it is more likely than not that the Appellant would not be the only person affected and that an announcement would have been made, either by HMRC or by the media, on becoming aware of such a failure.

29. It is more likely than not that the figures HMRC's computer system recorded are those entered by the Appellant.

30. The Appellant says that he had no idea the refund related to a specific tax return. The screens he had to go through when completing his return included a summary of the tax calculation which he had the option of viewing.

31. The Appellant seeks to absolve himself of the responsibility of ensuring his return is right and suggests that is HMRC's responsibility. There is no statutory obligation on HMRC to check a return, either on receipt, before making a repayment or at any subsequent time. In contrast s 8(1H)(2) TMA 1970 requires the taxpayer to make a declaration that the return is to the best of his knowledge correct and complete.

32. The Appellant says he relies on HMRC's software to perform the calculations, and suggests there must have been a problem with it. The mathematics in the calculation are correct. The problem is with the figures of pay and tax which were incorrect.

33. The Appellant says it is unreasonable that HMRC should seek to reclaim the repayment so long after it was made. Section 34 TMA 70 imposes a time limit on making an assessment. HMRC can do so at any time within four years from the end of the tax year in question.

34. In this case the assessment is for the year to 5 April 2011. The four year limit runs to 5 April 2015. The assessment was made on 22 August 2013.

35. The Appellant also disputes an associated interest charge. Section 31(1)(d) TMA 70 provides for an appeal to HMRC against an assessment to tax which is not a self-assessment. There is no provision in the Taxes Acts which gives a right of appeal against an interest charge. Consequently the Tribunal has no jurisdiction in that regard.

36. HMRC's enquiry was opened under s 29 of the Taxes Management Act 1970 as they had received information to the effect that the Appellant's employment and pension income figures as declared on his 2010-11 self-assessment return were incorrect. In those circumstances HMRC can open a s 29 Discovery enquiry for a tax year where the enquiry window has closed. The Appellant submitted his return on the 27 January 2012, therefore the point where HMRC could open an enquiry under s 9a passed on 26 January 2013, one year after submission. However as HMRC believed there had been an under assessment of tax, due to incorrect information provided by the Appellant, they are able open a Discovery enquiry.

Conclusion

37. As HMRC say, no evidence has been adduced by the Appellant to show that the figures provided by his employer and pension provider as shown in PAYE returns are incorrect. In any event the Appellant has not disputed the correctness of figures and infers that their calculations are accepted.

38. The discrepancies between the PAYE returns delivered to HMRC and the Appellant's self-assessment return are 'discoveries' for the purposes of s 29(1) TMA 70.

39. There is an obligation to check the accuracy of the return before submitting it to HMRC. The errors contained in the self-assessment return have resulted in a loss of tax, which was attributable to careless behaviour on the part of the Appellant. Consequently an assessment is permitted by virtue of s 29(4) TMA 70.

40. HMRC can raise a Discovery assessment at any time within four years from the end of the tax year in question. The assessment is for the year to 5 April 2011. The four year limit runs to 5 April 2015. The assessment was made on 22 August 2013 and is therefore in time.

41. For the above reasons the appeal is not allowed and the Discovery assessment is confirmed.

42. 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.

MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 19 November 2014