TC05979

Appeal number: TC/2016/05653

INCOME TAX *– assessment to additional tax on the basis that certain expenses were not incurred wholly and exclusively for the purposes of the trade - appeal dismissed.*

FIRST-TIER TRIBUNAL
TAX CHAMBER

SATNAM SINGH **Appellant**

- and -

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

TRIBUNAL: JUDGE TONY BEARE
LESLIE HOWARD

Sitting in public at Fox Court, 30 Brooke Street, London EC1N 7RS on 10 May 2017

The Appellant appeared in person

Mr P. Jones, Officer of HM Revenue and Customs, appeared for the Respondents

DECISION

Introduction

1. This decision relates to an appeal made by the Appellant against assessments to additional income tax in respect of the tax years of assessment 2009/2010, 2010/2011, 2011/2012 and 2012/2013.

2. The Respondents contend that the Appellant has under-stated the profits arising out of his trade as a driver for the four tax years in question. Although, in the course of the protracted correspondence which has passed between the parties, it was a little unclear whether the Respondents were alleging that these under-statements were attributable to the under-statement of taxable income or the over-statement of deductible expenses, Mr Jones, on behalf of the Respondents, made it clear at the hearing that the Respondents' are relying solely on the over-statement of deductible expenses in raising the relevant assessments. More particularly, the Respondents contend that the Appellant has claimed relief for the private use of his motor vehicle, contrary to Section 34 of the Income Tax (Trading and other Income) Act 2005, which precludes relief for expenditure which has not been incurred wholly and exclusively for the purposes of the trade.

3. Put briefly, the Respondents' case is that, although the Appellant, in his tax returns, made an adjustment of 10% to his deductible expenditure in respect of his private use of the vehicle, the actual adjustment should have been 29.25%. Indeed, Mr Jones stated that, in his view, the latter percentage was, if anything, generous to the Appellant, based on the Appellant's own submissions in the course of the correspondence.

Background

4. The dispute between the parties centres on the figures in respect of the tax year 2011/2012. The Respondents opened an enquiry into the Appellant's 2011/2012 tax return on 6 January 2014. The discussions between the parties since then have been based on the figures in respect of that tax year and, in view of the failure by the Appellant to maintain adequate records, the Respondents have used the "presumption of continuity" described in *Jonas v Bamford* (51 TC1) to make its assessments in respect of the other tax years which are the subject of this appeal. In other words, due to the absence of records maintained by the Appellant, the assessments in respect of the tax years 2009/2010, 2010/2011 and 2012/2013 are based on the figures for the tax year 2011/2012, indexed backwards and forwards (as the case may be) by reference to the retail prices index.

Arguments

5. The Appellant has raised no objection to the use of the "presumption of continuity" to make the assessments in respect of the tax years other than the tax year 2011/2012. However, he alleges that the Respondents have overstated the private use of his vehicle in the tax year 2011/2012, based on the figures supplied for that tax

year. So, at the hearing, the sole matter for us to consider was the extent to which the vehicle had been used for purposes outside the trade during the tax year 2011/2012.

6. It was agreed by the parties at the hearing that, based on the MOT records for the vehicle over a period which was not entirely on all fours with the relevant tax year but which was agreed to be close enough, the vehicle had covered 23,222 miles in the course of the tax year. The Appellant had declared taxable income of £13,973 in respect of the tax year. Based on assumptions suggested by the Appellant himself in the course of the discussions between the parties, it was assumed that the average fare in that period was for a journey of 5 miles and for a charge of £8.50. This meant that the Appellant would have had to have undertaken 1,643 journeys at £8.50 to achieve the declared taxable income and, using an average of 5 miles per journey, he would therefore have had 8,215 "income-generating miles".

7. It is at this point that the parties diverged. The Respondents alleged that an allowance should be made for an equal amount of "dead miles" within the course of the trade. This allowance took into account fare dodgers and miles driven by the Appellant in returning to his base after dropping off a customer. Taken together, the "income-generating miles" and "dead miles" amounted to business miles of 16,430. The difference between 23,222 and 16,430 was 6,792 and those were the miles which could be assumed to be private miles, the expenditure on which was not wholly and exclusively for the purposes of the trade. 6,792 expressed as a percentage of 23,222 was 29.25%. The Respondents pointed out that, even if one were to approach the calculation of private miles from the opposite direction, the same result would ensue. Mr. Jones drew our attention to a letter from the Appellant of 29 July 2015 in which the Appellant asserted that his private miles in the tax year amounted to 7,488.

8. In response, the Appellant contended that:-

(a) the figure of 8,215 "income-generating miles" needed to be increased to 10,500 to take into account fare-dodgers;

(b) the "dead miles" incurred in returning to base were greater than the miles described above because of the restrictions imposed by dual carriageways and the like and therefore that an additional 11,500 of "dead miles" should be taken into account;

(c) an additional 1,500 miles should be allowed for driving to MOT testing and servicing; and

(d) this amounted to 23,500 miles, which was approximately the same as the 23,222 miles in total for the year.

9. The Appellant was unable to explain how these contentions left any room for the private miles which he must have driven during the tax year in question. When pushed to explain, he came up with an estimate of 4,000 miles of private use, which was necessarily inconsistent with the contentions summarised in paragraph 8 above

and was, in any event, almost 20% of the total miles and therefore some way north of the 10% figure in his return.

Decision

10. We consider the Respondents submissions to be cogent and, if anything, generous to the Appellant. They are in large part derived from statements made by the Appellant himself in the course of the previous discussions and correspondence.

11. In contrast, the Appellant's submissions lack coherence and are inconsistent both internally and with his submissions in the course of the previous discussions and correspondence. For example, in his letter of 29 July 2015, the Appellant outlined the miles spent on private matters such as travelling to and from the gym and to and from home. By his own calculation, the figure for private miles set out in that letter was 7,488 – that is to say, a good 696 more private miles than the Respondents have taken into account in their assessments. He also alleged in that letter that 50% of his remaining miles were "dead miles", which again is contrary to his assertion at the hearing that the "dead miles" exceeded the "income-generating miles".

12. Given the deficiencies in the Appellant's submissions as described above, we consider that the contentions of the Respondents are to be preferred to those of the Appellant. Indeed, we consider that, if anything, the assessments imposed on the Appellant in respect of the tax years in question are generous to the Appellant. For these reasons, we dismiss the Appellant's appeals against the four tax assessments in question.

13. For completeness, we should note the position in relation to penalties for those four tax years of assessment. The Respondents initially imposed penalties on the basis of deliberate behaviour but subsequently, on review, changed the penalty assessments so that they were based on careless behaviour instead. They also wrote to the Appellant on 9 December 2016 offering to suspend the penalties provided that the Appellant agreed to the conditions set out in their letter. The Appellant had not responded to the letter from the Respondents containing that offer by the time of the hearing. However, in the course of the hearing, he indicated that he was minded to accept the conditions and it was agreed that, if he wished to do so, he would write to the Respondents (with a copy to the Tribunal) by 17 May 2017 to confirm that acceptance. Otherwise, the Respondents would assume that he did not accept the conditions and we would then consider the penalty position in our decision.

14. The Appellant did indeed write to the Respondents before the stipulated deadline and, although his letter was not a model of clarity, the Respondents have accepted that it amounts to an acceptance of the conditions set out in their letter of 9 December, 2016 and agreed to suspend the penalties accordingly. We would urge the Appellant to maintain accurate records of his private usage in accordance with the suspension conditions going forward in order to avoid future difficulties of this nature.

15. 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 paragraph 39 of the Tribunal Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASED DATE: 27 JUNE 2017