[2019] UKFTT 474 (TC)

Income Tax – Amendment to self-assessment tax return – Insufficient evidence to displace assessment - Inaccuracy Penalty – Whether careless – Yes – Appeal dismissed and penalty confirmed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TC07277

Appeal number: TC/2018/03471

BETWEEN

KHALID MAHMOOD **Appellant**

-and-

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

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1 on 24 June 2019

The Appellant in person

Kate Murphy litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Mr Khalid Mahmood, a management consultant by profession, appeals against an amendment made to his 2016-17 self-assessment tax return by HM Revenue and Customs ("HMRC") under s 28A of the Taxes Management Act 1970 ("TMA") increasing the tax due by £5,512.40. He also appeals against an "inaccuracy penalty" of £992.23 imposed under schedule 24 of the Finance Act 2007.

2. On 28 June 2019 the Tribunal released a Decision Notice dismissing the appeal which contained a summary of the Tribunal's findings of fact and reasons for the decision. In essence this was because in the absence of the underlying records and documents in support of his claim for expenses there was not sufficient evidence to displace the amendment to Mr Mahmood's 2016-17 self-assessment tax return. On 1 July Mr Mahmood made an application for permission to appeal to the Upper Tribunal. Attached to the application was a document headed, "Convergence Management Consultants Audit Trail (Brief) setting out a schedule of Mr Mahmood's expenditure from 5 April 2016 to 5 April 2017. In section D of the application for permission to appeal Mr Mahmood wrote:

> "Pursuant to the respected judge's adjudication, it is regrettable the attached documents formulating the basis of Judge Brooks determination at para 8 of the Summary decision, were not sent to or were not received at an appropriate time by the Tribunal and HMRC.
>
> This is a request for a review following submission of the underlying records to displace the amendment to the return and setting aside the associated penalty.
>
> (Attached Audit Trail – 05/04/2016 to 05/04/2017 Dated 24/06/2019 05:11:33 13 pages)"

3. Under Rule 35(4) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 ("the Rules"), it is made clear that if a Tribunal decision, as in this case, provides only summary findings and reasons, a party wishing to appeal to the Upper Tribunal must apply for full written findings and reasons for the decision before seeking permission to do so. This decision is therefore provided, in accordance with the Rules, in order to enable Mr Mahmood to decide whether to apply for permission to appeal.

FACTS

4. To help out friends Mr Mahmood agreed to work on a self-employed basis as a sub-contractor for Urban Interior Limited, as he did for Essex Development. He understood that the company was in discussions with HMRC regarding operation of the construction industry scheme ("CIS") and submitted invoices to it for the work he undertook. However, rather than provide Mr Mahmood with CIS certificates, Urban Interior Limited had treated him as an employee taxed under Pay as You Earn (PAYE) providing him monthly payslips showing gross and net payments.

5. Mr Mahmood included this income in the employment pages of his 2016-17 self-assessment tax return. He also, in the CIS section of the return, claimed business expenses resulting in a repayment claim of £5,356.05. In an amendment to the return the expenses were subsequently reduced to £1,127 but at the hearing Mr Mahmood confirmed that he sought to claim expenses of £12,087, the sum originally claimed in the return. In support of his claim he provided a copy of his accounts showing his profit and loss for the period 1 June 2016 to 31 May 2017.

6. Having opened an enquiry into the return HMRC concluded that it had been correctly filed by Mr Mahmood who, in the absence of self-employed or CIS income from Urban Interior Limited was not entitled to claim the expenses.

7. HMRC also determined that, in the circumstances, Mr Mahmood was liable to a penalty under schedule 24 of the Finance Act 2007 as he filed an inaccurate return. HMRC regarded the inaccuracy to be carless rather than deliberate and the disclosure to have been prompted by the enquiry. Having taken account of the quality of the disclosure, the assistance given by Mr Mahmood and his co-operation with HMRC, a penalty of £992.23 was imposed (being 18% of the potential lost revenue of £5,512.40, the amount of the amendment to the return, a reduction for the disclosure of 80%). HMRC also considered whether there were 'special circumstances' for reducing the penalty but were of the view that that there were not any such circumstances.

8. Although consideration was given to suspending the penalty (under paragraph 14 of schedule 24 to the Finance Act 2007 the parties were unable to reach agreement as to the conditions to be applied.

LAW

9. Section 50(6) TMA provides:

> If, on an appeal notified to the tribunal, the tribunal decides—
>
> (a) that, the appellant is overcharged by a self-assessment;
>
> the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

The long and well established effect of such a provision that an assessment or amendment shall "stand good", is that is it for the appellant, in this case Mr Mahmood, to satisfy the Tribunal upon sufficient evidence that the amendment to the return was incorrect (see eg *T Haythornwaite & Sons v Kelly (Inspector of Taxes)* (1927) 11 TC 657).

10. Provisions imposing penalties on taxpayers who make errors in certain documents, including self-assessment tax returns are contained in schedule 24 to the Finance Act 2007. A person is liable to a penalty if there is a careless or deliberate understatement of a liability to tax (paragraph 1 of schedule 24). An inaccuracy is "careless" is it was due to a failure by the person to take reasonable care (paragraph 2 of schedule 24).

11. The amount of a penalty, under paragraph 1 is set out at paragraph 4 of schedule 24. It is based on the "potential lost revenue", ie the additional amount due or payable in respect of tax as a result of correcting the inaccuracy (paragraph 5 of schedule 24). It also and depends on quality of the disclosure (paragraph 9 of schedule 24). In the present case as HMRC became aware of the inaccuracy as the result of an enquiry into Mr Mahmood's return the disclosure was "prompted" (paragraph 9 of schedule 24). However, a penalty must be reduced to reflect the quality of the disclosure (paragraph 10 of schedule 24).

12. As noted above in this case the potential penalty was reduced by 80% to reflect the quality of the disclosure by Mr Mahmood.

DISCUSSION AND CONCLUSION

13. I should first deal with the additional evidence provided by Mr Mahmood. In *Ladd v Marshall* [1954] EWCA Civ 1, Denning LJ (as he then was) said:

> "In order to justify the reception of fresh evidence …, three conditions mast be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence most be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must

> be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."

14. In this case it would appear that the evidence was available at the time of the hearing. Given that it is a schedule of the expenditure, presumably based on invoices/receipts etc which were not provided and therefore not the underlying core documents which would establish the expenditure was actually incurred, it is unlikely to be sufficient in itself to displace the assessments and, as such, would be unlikely to have the necessary influence on the outcome. While I see no reason to doubt the credibility of the document, as the three *Ladd v Marshall* conditions have not been fulfilled it should not be admitted.

15. I fully accept Mr Mahmood's account of what happened with regard to Urban Interior Limited and how he was meant to be treated as a self-employed sub-contractor rather than an employee. However, as the only evidence to support the expenses claimed are his accounts and not the underlying records on which they were based, I am unable to find that there is sufficient evidence to displace the amendment to his return (and would have done so even if the additional evidence had been produced at the hearing or subsequently admitted). As such, I have no alternative but to dismiss his appeal.

16. Turning to the penalty, Mr Mahmood accepted that there was an inaccuracy in the return. Having regard to all the circumstances, I agree with HMRC that the inaccuracy was caused through carelessness, in that expenses were claimed without supporting evidence in the CIS section of his return. I also consider that the reductions given by HMRC are appropriate and reflect the quality of the disclosure by Mr Mahmood. Accordingly, I confirm the penalty.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

17. 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.

JOHN BROOKS
TRIBUNAL JUDGE

Release date: 22 July 2019