



Neutral Citation: [2023] UKFTT 293 (TC)

Case Number: TC08764

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Manchester

Appeal reference: TC/2022/00745

CLOSURE NOTICES – records – burden of proof – appeal dismissed

Heard on: 1 March 2023
Judgment date: 9 March 2023

Before

**TRIBUNAL JUDGE JENNIFER DEAN
MRS ANN CHRISTIAN**

Between

CHRISTOPHER BYRNE

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: The Appellant did not attend

For the Respondents: Ms V. Halfpenny litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal by the Appellant against Closure Notices and amendments to the Appellant's SATRs for the tax years 2016/17, 2017/18 and 2018/19. The total amount under appeal is £7,898.16.
2. The Appellant did not attend the hearing. We were satisfied that the Appellant had been notified and that it was in the interests of justice to proceed with the hearing under Rule 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

BACKGROUND

3. The Appellant is a scrap metals dealer, selling end of life vehicles. He has been registered for Self-Assessment since 2005.
4. On 12 November 2019, HMRC issued a letter to the Appellant, warning him of determinations for the years 2016/17 and 2017/18, as the Respondents had not received the Appellant's tax returns for those years.
5. The tax returns were completed at a meeting attended by the Appellant with HMRC on 22 November 2019.
6. On 28 January 2020 HMRC opened an enquiry under s9A TMA 1970 into the Appellant's tax returns.
7. In a telephone call on 5 February 2020 the Appellant stated he did not have any business records and does not earn anything. HMRC explained that the enquiry had been opened because a single round figure of profit of £4,000 had been declared for each tax year. HMRC considered it unusual for the figures to be identical for each year.
8. The Appellant advised he has medical conditions and required help with his SATRs which was usually given by his wife. He stated he takes £80 out of the business each week as "pocket money"/wages. The amount left was treated as a float. All the money he receives is cash and not all goes into his bank account. The industry is regulated and he cannot receive cash. The Appellant stated he received most payments by cheque or bank transfers but some cash payments were also received.
9. HMRC requested to see the business' sales and expenditure records as it appeared to them that the £80 was drawings rather than net profit. The Appellant advised that he does not have records because he is too busy and cannot look at them. He acknowledged his legal obligations but explained that he prioritises his health. The records received from scrap sales are left in his van until it is cleaned when they are thrown away.
10. The Appellant told HMRC that he sold cars to European Metal Recycling ("EMR") in Bootle. He also worked for EMR recovering vehicles on its behalf for which he was paid £55 per day. The Appellant advised he did not have any purchase invoices as he liked to deal with cash with no paperwork. He has no credit cards, one business account and one personal account. He agreed to obtain bank statements but these were never provided.
11. The matter was delayed due to the pandemic. On 7 August 2020 HMRC wrote to EMR to request copies of the Appellant's business records for the period 6 April 2016 to 5 April 2019. The records showed an income as follows:

- (a) 2016/17 of £46,977.04
- (b) 2017/18 of £62,844.66
- (c) 2018/19 of £69,270.48

HMRC'S CASE

12. In the absence of any business records HMRC calculated the net profit as follows:

Tax Year	Turnover	Expenses	Net Profit	Tax due
2016/17	£46,977	£32,451	£14,562	£1,297.58
2017/18	£62,844	£46,812	£21,032	£3,064.52
2018/19	£69,270	£47,796	£21,474	£3,099.30

13. The net profit expected in a business of this type is 31%. This was applied to the turnover for each year to calculate the expected net profit. HMRC then worked backwards to establish an expense figure for each year.

14. On 31 March 2021 HMRC issued Closure Notices for the tax years under appeal. HMRC did not accept the Appellant's figures (set out below) as the sales figures were different to those provided by EMR and "wages" and subsistence had been shown as expenses.

APPELLANT'S CASE

15. In response, the Appellant provided revised calculations

Tax Year	Turnover	Expenses	Wages	Tax due
2016/17	£46,773	£43,210	£3,760	£0
2017/18	£67,627	£42,933	£3,840	£0
2018/19	£66,453	£62,453	£4,000	£0

16. The Appellant had received assistance from a third party in providing the figures. He confirmed that he had verbally provided the figures and claimed that the advisor had come to a fair assessment of his income and expenses.

17. On 28 April 2021 the Appellant appealed the Closure Notices and provided further revised figures as follows:

Tax Year	Turnover	Expenses	Profit	Tax due
2016/17	£46,977	£46,907	£3,829	£0
2017/18	£67,844	£67,875	£3,878	£0
2018/19	£69,270	£67,002	£6,267	£0

18. HMRC upheld the Closure Notices on review and on 20 January 2022 the Appellant appealed to the Tribunal.

19. The Appellant's grounds of appeal are as follows:

"I totally disagree with the conclusions, of the HMRC, as of from 2007, my income has remained constant and it was always expected that my earnings was approx. £4,000 pa, until officer early demanded I accept his findings as fact. he was unprofessional. and his colleagues just support him, with his made up figures, the figures I have given have been dismissed out of hand, while their best judgement assessment stands? what a ridiculous system this is, were multimillion pound

organisations get away without paying a penny each year, so they go after the little men, as were far easier targets” [sic]

ISSUE TO BE DETERMINED

20. The issue in this case is whether the Closure Notices issued and amendments are correct.

21. The burden of proof rests with the Appellant to demonstrate that the conclusions set out in the Closure Notices are incorrect.

DISCUSSION AND DECISION

22. s.9A TMA 1970 provides:

(1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so (“notice of enquiry”)—

(a) to the person whose return it is (“the taxpayer”),

(b) within the time allowed

(2) The time allowed is—

(a) if the return was delivered on or before the filing date, up to the end of the period of twelve months [after the day on which the return was delivered;]

(b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;

(c) if the return is amended under section 9ZA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made.

For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October.

23. The Appellant’s tax return for the tax years 2016/17 and 2017/18 were filed late, on 4 December 2019. HMRC therefore had until 5 December 2020 to open an enquiry.

24. The Appellant’s tax return for the tax year 2018/19 was filed on 22 November 2019, on time (a deferred date was set). The Respondents therefore had until 23 November 2020 to open an enquiry.

25. HMRC sent the notice of enquiry for each of the tax years under appeal, under a cover letter dated 28 January 2020. We were therefore satisfied that the enquiries were opened within the statutory time limits.

26. Each of the Closure Notices set out HMRC’s conclusions and the amendments made in accordance with s 28A(2)(b) TMA.

27. The Appellant did not attend to give evidence and we therefore reached our decision on the material before us. The Appellant had confirmed to HMRC that he did not keep records as required by s12B(3) TMA 1970. In those circumstances we accepted HMRC’s submission that he is unable to provide accurate figures for income and expenses. The accounts provided to HMRC were confirmed by the Appellant to have been verbally given by him to a third party who then provided an estimate. The figures are not supported by any documentary evidence and in those circumstances, we cannot be satisfied as to their accuracy.

28. In the case of *Johnson v Scott* (1977) 52 TC 383 at 393 in the High Court, Walton J observed with regard to assessments:

“The true facts are known, presumably, if known at all, to one person only - the Appellant himself. If once it is clear that he has not put before the tax authorities the full amount of his

income, as on the quite clear inferences of fact to be made in the present case he has not, what can then be done? Of course all estimates are unsatisfactory; of course they will always be open to challenge in points of detail; and of course they may well be under-estimates rather than over-estimates as well. But what the Crown has to do in such a situation is, on the known facts, to make reasonable inferences. When, in para 7(b) of the Case Stated, the Commissioners state that (with certain exceptions) the Inspector's figures were 'fair', that is, in my judgment, precisely and exactly what they ought to be - fair. The fact that the onus is on the taxpayer to displace the assessment is not intended to give the Crown *carte blanche* to make wild or extravagant claims. Where an inference, of whatever nature, falls to be made, one invariably speaks of a "fair" inference. Where, as is the case in this matter, figures have to be inferred, what has to be made is a "fair" inference as to what such figures may have been. The figures themselves must be fair.”

29. In *Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015, Carnwath LJ set out the following relevant guidance in relation to ‘best judgment’ (at [38]):

“i) The Tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material properly available to it, the burden resting on the taxpayer. In all but very exceptional cases, that should be the focus of the hearing, and the Tribunal should not allow it to be diverted into an attack on the Commissioners exercise of judgment at the time of the assessment.

ii) Where the taxpayer seeks to challenge the assessment as a whole on "best of their judgment" grounds, it is essential that the grounds are clearly and fully stated before the hearing begins.

iii) In particular the Tribunal should insist at the outset that any allegation of dishonesty or other wrongdoing against those acting for the Commissioners should be stated unequivocally; that the allegation and the basis for it should be fully particularised; and that it is responded to in writing by the Commissioners. The Tribunal should not in any circumstances allow cross-examination of the Customs officers concerned, until that is done.”

30. We were satisfied that HMRC had used best judgment. The tax returns themselves were not included in the bundle, but we accepted HMRC’s confirmation that the figures shown in the summaries within the bundle used the Appellant’s figures and there was no indication that the Appellant disputed this. The amendments were made on the basis of documentary evidence provided by EMR; the only documentary evidence available. The Appellant has provided no documentary or oral evidence to challenge or displace the figures.

31. Where assessments are made within normal time limits the burden is on the appellant to satisfy the Tribunal that those assessments are wrong or excessive. We consider that the Appellant has not discharged that burden.

32. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

33. 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.

**JENNIFER DEAN
TRIBUNAL JUDGE**

Release date: 09 MARCH 2023