Neutral Citation: [2023] UKFTT 785 (TC)

Case Number: TC08938

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London

Appeal references: TC/2020/00177
TC/2020/00178
TC/2020/04457
TC/2020/04458

Income Tax/Capital Gains Tax – Penalties – Whether s 317 Proceeds of Crime Act 2002 qualifying condition was met – Whether loss of tax 'discovered' – Whether assessments made in time – Whether assessments should be upheld – Whether behaviour of Appellant(s) deliberate (for purposes of time limit and/or calculation of penalties) – Calculation of penalty assessments – Appeals dismissed

Heard on: 13 – 16, 20 & 21 June 2023
Judgment date: 21 September 2023

Before

TRIBUNAL JUDGE JOHN BROOKS
TRIBUNAL MEMBER JO NEILL

Between

MOHAMMED BUTT
MAHFOOZ BEGUM

Appellants

and

NATIONAL CRIME AGENCY

Respondents

Representation:

For the Appellant: Ben Blades of counsel, instructed by Aliant Law and Muthupandi Ganesan of Aliant Law

For the Respondents: Sarah Black of counsel, instructed by the National Crime Agency

DECISION

INTRODUCTION

1. Under s 317 of the Proceeds of Crime Act 2002 ("POCA") the National Crime Agency ("NCA") may, by issuing a notice (a "Section 317 Notice") to the Board of HM Revenue and Customs ("HMRC"), adopt HMRC's "general Revenue functions" in respect of a person if it has reasonable grounds to suspect that, "income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), (see s 317(1)(a) POCA).

2. In this case, the NCA having issued Section 317 Notices on HMRC, issued the appellants, Mohammed Butt and Mahfooz Begun, with assessments under s 29 the Taxes Management Act 1970 ("TMA") and penalty determinations under ss 7 and 95 TMA, schedule 24 to the Finance Act 2007 and schedule 41 to the Finance Act 2008. The years assessed and the sums the NCA contend are now due are set out in the tables appended to this decision. These have been adjusted to take account of further information provided to the NCA and, as a result, are therefore different from the amounts originally assessed and shown, eg in the "view of the matter" letters sent to Mr Butt and Mrs Begum by the NCA (see paragraphs 56-57 and 59-60 respectively, below).

3. The NCA, represented by Sarah Black of counsel, contends that Mr Butt and Mrs Begum have been in receipt of income or gains that have arisen either directly or indirectly as the result of criminal conduct which should have been charged to tax but have not been declared. Therefore, she says, the assessments and penalties, imposed on the basis of deliberate but not concealed behaviour, should be upheld.

4. Mr Butt and Mrs Begum, represented by Ben Blades of counsel and Muthupandi Ganesan of Aliant Law, say that all of the income derived in the period with which this appeal is concerned was lawfully obtained, predominantly from a series of fashion businesses and a successful grocery business in the Netherlands.

5. Although carefully considered, in reaching our conclusions in this matter it has not been necessary for us to refer to every submission or cite every authority to which we were referred on behalf of the parties.

EVIDENCE

6. In addition to a bundle and supplementary bundle (both electronic), comprising 2,314 and 279 pages respectively, we heard from Mr Butt and Mrs Begum.

7. In his witness statement Mr Butt had said that he was "happy" that his English was "good enough" and he did not need his statement translated. Although he initially answered questions in English, as it was considered more helpful for him, most of his cross-examination was conducted through the Tribunal appointed interpreter (who was present at the hearing primarily to assist Mrs Begum) and his answers were given in Urdu.

8. We did not find Mr Butt to be a particularly helpful or reliable witness. We accept that he has health issues and that some of the matters on which he was giving evidence occurred as far back as the early 1980s. We also accept that he may have had some difficulties understanding the questions put to him and that this might explain his often evasive responses and failure to answer what he had been asked. That said, we found his evidence to be, at best, somewhat vague. While that in itself is perhaps not particularly surprising, given the passage of time, he was nevertheless able to answer some questions – especially when it supported his case – in specific detail, eg his recollection of the price of bricks in 2000.

9. Mr Butt also gave new evidence and explanations in the course of his cross-examination which had not previously been mentioned either in correspondence or in his witness statement.

10. By way of example, he said that he had provided Mr Davidson (see below) with a breakdown of funds used to purchase property in Dunstable Road, Luton. However, there is no reference to such a breakdown in any of Mr Davidson's Reports even though Mr Davidson, in evidence, confirmed that had he been provided with this information it would certainly have been included and referred to in his Reports. Another example of new evidence from Mr Butt was his assertion in relation to his claim for the recovery of £410,000 seized from his nephew by HM Customs and Excise ("HMCE") (see paragraph 72, below) which contradicted Mr Diedrick's evidence that Mr Butt had claimed ownership of the money. However, in contrast to Mr Diedrick, Mr Butt said, in evidence that it was not him but someone else who had attended the court proceedings and claimed ownership of the money and that the NCA "took his [the other person's] name out of the proceedings".

11. Mrs Begum gave evidence in Urdu through an interpreter. However, we were unable to derive much assistance from her evidence which was limited in nature. Indeed, much of her evidence was to the effect that she was unable to assist the Tribunal as her husband, Mr Butt, dealt with all of the family's financial affairs.

12. We also heard from Raymond Davidson BA FCA MAE, Director of Davidsons Forensic Accountants, who had prepared three "Expert Accountancy Reports". Mr Davidson was instructed on behalf of Mr Butt and Mrs Begum as an expert witness to analyse all of their available bank statements:

> "… with a view to establishing that the monies the Appellants' put through their accounts and which they accumulated were not as a result of illegal activity." [see paragraph 1.9 of the First Report, paragraph 1.9 of the Second Report and paragraph 1.9 of the Third Report]

13. The First Report, dated 10 July 2017, was in response to a claim in the High Court by the NCA, under Part 6 POCA, on 18 December 2015 for the recovery of unpaid income tax, capital gains tax ("CGT") and National Insurance Contributions ("NICs") (see paragraph 55, below).

14. The Second Report, dated 8 December 2021, is an "Addendum Report" to the First Report and was prepared for the purposes of the present hearing.

15. The Third Report, dated 5 October 2022, is a "Further Addendum Report" to the First Report. Its purpose was to respond to a schedule of questions raised by the NCA on 27 May 2022 in relation to the First Report.

16. All three Reports confirm that Mr Davidson did, "not perform any auditing or verification work to substantiate the figures used" (see paragraph 1.11 of the First Report) and was not instructed to do so (paragraph 1.11 of the Second Report and paragraph 1.12 of the Third Report). The Reports also confirm that the figures used had been provided by Mr Butt, Mrs Begum and their solicitors and had been accepted by Mr Davidson who had neither questioned their veracity or sought further underlying documents to establish their accuracy.

17. In addition, although the Reports all contained an "Experts Declaration", there were occasions, when giving evidence, that Mr Davidson seemed to stray from his role as an expert and sought to argue the appellants' case. For these reasons we were unable to derive much, if any, assistance from his evidence which we found to be of limited value only.

18. Kevin Diedrick, the NCA officer who issued the Section 317 Notices, the assessments and the penalty determinations, the subject matter of these proceedings, also gave evidence. We found him to be a very credible and straightforward witness and were very much assisted by his open and candid responses to questions when cross-examined.

FACTS

19. On 10 August 2021 the Tribunal (Judge Gething) directed the parties to "endeavour" to produce an agreed statement of facts and issues. However, as they were unable to agree we were provided with separate statements of facts and issues by the NCA and appellants. It is on the basis of these statements in the light of the evidence before us that we make the following findings of fact.

Background

20. Mr Butt is married to, and lives with, Mrs Begum at a property at Beresford Road in Luton (the "Family Home").

21. In the years before 1998-99 Mr Butt said that he was based in the Netherlands and had operated a string of "reasonably profitable" fashion business in Amsterdam that had been supplied by stock from London.

22. From around 1980 Mr Butt had, with his eldest brother Mohammed Jamil, established a grocery business in Amsterdam. Mr Butt's evidence was that his trips to the United Kingdom ("UK") were brief, often arriving in the morning and returning in the evening of that same day. However, this was contradicted by Mrs Begum who said her husband stayed for up to a week at a time with her and their five (at the time) young children who were born in the UK. Mrs Begum, who lived there from its acquisition in 1980, explained that Mr Butt stayed in the Family home with her and their children when in the UK and with his brothers when in the Netherlands. She considered he was "living here [in the UK] and living there [in the Netherlands] also."

23. On 25 September 2012, following a criminal investigation into allegations of drug trafficking and money laundering by him and ten other members of his family, Mr Butt was arrested by officers of the Serious Organised Crime Agency ("SOCA"), the predecessor of the NCA, on suspicion of money laundering by an Organised Crime Group ("OCG") in Luton. However, in the absence of sufficient evidence for a criminal prosecution, no charges were brought against him. Two of his brothers and his two sons were charged and convicted of money laundering and/or drug trafficking offences.

24. Mrs Begum was never arrested either in connection with these investigations or at all. However, it was not until shortly before the commencement of the hearing of this appeal that this was accepted by the NCA which had, until 6 June 2023, maintained that Mrs Begum had been arrested in 2012 but that the case was discontinued due to lack of evidence.

Properties

179 – 185 Dunstable Road

25. This property at 179 – 185 Dunstable Road, Luton, was purchased in 1996 by Mr Butt's brother Mohammed Jamil with funds provided by Mr Butt (Mr Butt says he made a "contribution" to its purchase). The property was later split into four title numbers and converted into four retail units and offices. In 1998, 183 Dunstable Road was let to Mr Butt who operated his business, Jillani Fashions, from there. The offices at Dunstable Road were let to a company, Luton Health & Training Centre Limited.

26. The four title numbers were allocated to Mr Butt and his brothers Mohammed Habib and Mohammed Khalil. Mr Habib and Mr Khalil transferred their units to Mr Butt and Mrs Begum's sons, Yasdani Ghulam and Rabani Ghulam. Mr Butt's ground floor unit was transferred to Mrs Begum. There was no consideration for any of these transfers which are referred to in the respective Statements of Fact as being "gifted".

27. In 2011, Mr Jamil commenced High Court proceedings against Mr Butt, Mrs Begum and other family members, to reverse the transfer of the retail units and the offices from the family members back to him claiming that he had not received any payment for the transfer of the property. The claim was disputed and Mr Butt and Mrs Begum and their sons filed a defence and counter claim stating that Mr Butt was the beneficial owner of the properties contained within 179-185 Dunstable Road. In the counter claim, Mr Butt contended that the funds used to purchase the property had been provided by him and added that Mr Jamil was in fact holding the in trust for him, Mr Butt.

28. The High Court proceedings taken by Mr Jamil were subsequently withdrawn and the grocery business that was jointly owned by Mr Butt and Mr Jamil was transferred into Mr Jamil's sole name. During confiscation proceedings involving, Yasdani Ghulam and Rabani Ghulam (Mr Butt and Mrs Begum's sons), the Court held that they were the beneficial owners of 181 Dunstable Road and 185 Dunstable Road which were part of the original title.

29. On 14 January 2004 Mr Butt transferred 183 Dunstable Road to Mrs Begum leaving 179 and the upper floor offices of 179 – 185 Dunstable Road in his sole name.

Family Home

30. The Family Home was originally purchased by Mr Butt on 9 May 1980 for £18,000 with the aid of a mortgage from the Nationwide Building society. It is a six bedroom property where Mr Butt lived with his wife, Mrs Begum and their five children. On 29 May 1987, the property was transferred by Mr Butt to his brother Mohammed Wazir for £30,000. Mr Butt and Mrs Begum then rented the property from Mr Wazir for a monthly rent of £300 per month.

31. Following the extension of the property to include a two storey side extension and a single storey extension at the rear it was transferred by Mr Wazir on 2 February 1999 to Mrs Begum. Although HM Land Registry records show consideration of £40,000 was paid for the this transfer Mr Butt and Mrs Begum maintain that it was "purely a paper exercise" and that no money changed hands.

32. Mr Butt and Mrs Begum continue to reside at the Family Home, as they have since its acquisition in 1980.

Netherlands Property

33. In 1982 Mr Butt purchased a property in The Netherlands for approximately £7,000. He sold this property in 2008 for approximately €500,000. This Dutch property consisted of a commercial premises on the ground floor and flats on the upper floors. Although we were not provided with bank statements for the account we understand that it is not disputed that the sale proceeds from the Dutch property were deposited into Mr Butt's ING bank account. These proceeds were withdrawn from this account in cash over the period from of 23 July to 25 July 2008.

Exning Road

34. Mr Butt purchased a property at Exning Road, London on 30 November 2009 for £170,000. The purchase was funded by a deposit of £34,683.03, which came from his Nationwide Building Society account. The balance of the funds to purchase the above property, £145,000, was from a bridging loan from Handf Finance Ltd. This bridging loan was repaid in full on 24 June 2010 (seven months after the purchase), with the amount repaid being £151,231.

35. The bridging loan payment was from Mr Butt's account with Lloyds Bank. it was funded by credits of £155,000 into his Lloyds bank account which can be broken down as follows:

(1) £75,000 from R Ghulam (Mr Butt and Mrs Begum's son) on 17 June 2010 (which came from the sale proceeds of the Worsley Road property, see below);

(2) £50,000 from Rehiat Kabir (Mr Butt and Mrs Begum's daughter) on 20 June 2010; and

(3) £30,000 from Y Ghulam (Mr Butt and Mrs Begum's other son) on 24 June 2010.

36. Mr Butt sold the Exning Road property on 19 November 2010 for £225,000. The proceeds of sale were initially deposited into his Lloyds Bank on 10 November 2010 and transferred into another account he held at Lloyds on 23 November 2010.

Worsley Road

37. The property at Worsley Road, London, was purchased by the Mr R Ghulam (Mr Butt and Mrs Begum's son) on 14 December 2009 for £190,000. Mr R Ghulam paid a deposit of £40,535.85 with the balance of £163,000, coming from a bridging loan with Handf Finance Ltd. He sold the property on 22 April 2010 for £250,000 and repaid the bridging loan in full, the amount repaid being £163,831.85, out of the sale proceeds. The balance of those sale proceeds, £80,351.65, was deposited into Mr R Ghulam's bank account. £75,000 was transferred from Mr R Ghulam's bank account to Mr Butt's Lloyds Bank account and was used to repay the bridging loan on the Exning Road property.

Royston Avenue

38. Mr Butt purchase a property at Royston Avenue, London on 19 January 2011 for £192,500. The purchase of this property was funded in full from the sale proceeds of the Exning Road property with the payment coming from Mr Butt's Lloyds Bank. These funds had been transferred into the Lloyds accounts from his other account at Lloyds Bank.

39. The Royston Avenue property was sold by Mr Butt on 10 August 2012 for £235,000, with the proceeds being deposited into his Lloyds Bank account. Mr Butt subsequently transferred £230,070 from that account into his other Lloyds Bank account in three transactions on 10 August 2012.

Stuart Street

40. The commercial property, at Stuart Street, Luton was purchased by Mr Butt on 12 October 2012 for £155,000. Its purchase was fully funded from the sale proceeds of the Royston Avenue property. Payment came from Mr Butt's Lloyds Bank account on 19 September 2012.

41. With the exception of Worsley Road, all of the above properties which were owned and sold by Mr Butt had been rented out to tenants during his period of ownership. Mr Butt has not declared rental income or capital gains in respect of the purchases and sales of properties to HMRC.

Other Assets

42. The First Appellant is the registered keeper of a BMW X5. There was some confusion as to whether Mr Butt had one or two cars. However, he clarified the position confirming that there had only been one vehicle but that a personalised number plate had been acquired which had replaced the original number plate.

43. This vehicle was purchased new at a cost of £51,950, with the purchase being funded by a deposit of £22,000 from Mr Butt and finance from Barclaycard Motor Loans. The car finance was in the name of Mr Butt with the monthly repayments for this loan coming from his bank account. The vehicle was registered to Mr Y Ghulam until May 2012. In his criminal confiscation proceedings Mr Ghulam stated that he was not the beneficial owner of the BMW X5 which was held in trust for Mr Butt.

Tax Investigation

44. For 1998-99 to 2003-04 Mr Butt had declared income from his business of Jillani Fashions to HMRC. Mr Butt had also declared rental income to HMRC that he had received from the rented offices at 179-185 Dunstable Road, Luton, for 2003-04 to 2012-13. However, the income declared did not include:

(1) rent Mr Butt received for a telephone mast on the roof of the Dunstable Road property;

(2) rent due from the ground floor units at 181 and 185 Dunstable Road;

(3) rent received from residential properties he held in his name;

(4) rent received from Barnfield College, held in the Mr Butt's name; or

(5) the capital gains he made on the disposal of two other residential properties.

45. On 13 August 2014, the NCA issued a Section 317 Notice on HMRC formally adopting HMRC's taxation powers for 1998-99 to 2011-12 (inclusive) in respect of Mr Butt. This was acknowledged by HMRC on 19 August 2014.

46. On the same day, 13 August 2014, the NCA formally adopted, by the issue of a Section 317 Notice, HMRC's taxation powers for the years 1998-99 to 2011-12 (inclusive) for Mrs Begum. The Section 317 Notice was acknowledged by HMRC on 19 August 2014.

47. A second Section 317 Notice in respect of Mr Butt was issued by the NCA on 25 March 2015 to formally adopt revenue functions for 1997-98 and 2012-13. This was acknowledged by HMRC on 2 April 2015.

48. On 25 June 2015 the NCA issued a third Section 317 Notice in respect of Mr Butt to formally adopt revenue functions for 1996-97. This third Notice was acknowledged by HMRC on 30 June 2015.

49. The Section 317 Notices had been issued by Mr Diedrick on the basis of:

(1) a covering note (which was not included in the evidence before the Tribunal);

(2) the NCA's criminal investigation, in particular a witness statement of David Pike, a financial investigator employed by SOCA, who had conduct of an investigation into the financial affairs of Mr Butt (see below);

(3) the arrest of Mr Butt;

(4) Mr Diedrick's belief, which he now accepts was wrongly held, that Mrs Begum had been arrested on suspicion of fraud relating to a property transaction and that the case against her had been discontinued due to lack of evidence; and

(5) the record of a hearing before Dover Magistrate's Court on 5 December 1997 (see paragraph 72, below).

As for the criminal conduct concerned, although in evidence Mr Diedrick agreed, when questioned, that income assessed was "probably the result of money laundering" he also said, particularly in relation to the personal and travel expenditure and the unidentified income of Mr Butt and Mrs Begum that "it was not all related to money laundering."

50. On 23 November 2015 Sing J granted a freezing order in respect of the Mr Butt's and Mrs Begum's assets in the United Kingdom.

51. On 2 December 2015 the NCA formally notified the Mr Butt and Mrs Begum of the adoption and commencement of the tax investigation and included tax assessments for Mr Butt

for 1996-97 to 2012-13 (inclusive), and tax assessments for Mrs Begum for 1998-99 to 2011-12 (inclusive).

52. The assessments on Mr Butt for 1996-97 to 2004-05 were issued under s 29 TMA and stated:

> "Assessment for Income Tax:
>
> under Section 18 (Schedule D) of the Income and Corporation Tax Act 1988 under Case 1 and/or in the alternative Case II and/or in the alternative Case VI,
> or in the alternative pursuant to Section 319 of the Proceeds of Crime Act 2002"

For 2005-06 and subsequent years until 2012-13, the s 29 TMA assessments stated:

> "Assessment to Income Tax:
>
> under S.5 and/or in the alternative S.687 of the Income Tax (Trading and Other Income) Act 2005;
> or in the alternative pursuant to S.319 of the Proceeds of Crime Act 2002.

53. CGT assessments were issued to Mr Butt for 2010-11 and 2012-13 which were made:

> "Under Section 18 (Schedule D) of the Income and Corporation Taxes Act 1988 under Case I and/or in the alternative Case II and/or in the alternative Case VI;
> or in the alternative pursuant to Section 319 of the Proceeds of Crime Act 2002."

54. Section s 29 TMA assessments issued to Mrs Begum for income tax were, between 1998-99 to 2004-05, similarly stated to have been:

> "Under Section 18 (Schedule D) of the Income and Corporation Tax Act 1988 under Case 1 and/or in the alternative Case II and/or in the alternative Case VI, or in the alternative pursuant to Section 319 of the Proceeds of Crime Act 2002"

All subsequent assessments for income tax were made under:

> "under S.5 and/or in the alternative S.687 of the Income Tax (Trading and Other Income) Act 2005; or in the alternative pursuant to S.319 of the Proceeds of Crime Act 2002."

55. On 18 December 2015 the NCA issued a claim in the High Court against Mr Butt and Mrs Begum in the sum of £956,928.31. The sum included tax, interest and costs to that date. However, the claim was stayed by consent pending the determination of the present case.

56. On 22 December 2015 Mr Butt and Mrs Begum, through their previous representative, notified their appeal to the NCA on the grounds that the tax assessments were estimated and excessive and did not reflect their true tax liability. Following the notification of their appeals Mr Butt and Mrs Begum instructed their current representatives, Aliant Law, to act on their behalf.

57. On 2 May 2017 the NCA (Mr Diedrick) wrote to Mr Butt with a "view of the matter" letter. Although that letter had erroneously omitted the accumulation of the funds for the purchase of 179-185 Dunstable Road the mistake was rectified for the tax years 2000-01 to 2003-04 in line with the evidence of Mr Diedrick and is reflected in the table appended to this decision. The purpose the "view of the matter" letter was to explain to Mr Butt how Mr Diedrick had reached his decision and to set out the basis of the assessments that he had issued.

58. With regard to each of the years assessed Mr Diedrick wrote:

"1996/97
For the tax year 1996/97 you did not declare any income to HMRC. During this period you purchased the commercial property of 179 – 185 Dunstable Road for £220,000 with sources of funds not known. In addition the above property was converted from one retail unit to four retail units an office is only upper floors but the cost of this conversion and the source of its funding again is not known.

To arrive at the basis of my assessment I have just used the figure of £220,000, which was the amount of funds you required to purchase the above commercial property. I have included figures of £18,772 from FES [Family Expenditure Survey] to cover the amount required to fund your personal expenditure.

This gives rise to income of £278,772 (sic). And as a consequence the revised tax and Class 4 National Insurance 2 due is as follows:

Tax £89,766.80
NIC £1,008.20.

1997/98
For the tax year 1997/98 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: £19,344 to fund personal expenditure as per the FES. The figure needed to fund your holiday expenditure of £3,508. I have estimated the renovation cost to convert the commercial premises from one retail unit 24 retail units and offices on the upper floors, so I have included the amount of £25,000 in the basis of assessment, which was 50% of the above estimated costs. The excess deposits of £23,346.99 for 2002/03 Has been extrapolated backwards using the Retail Price Index, as there are no bank statements for this period and gives rise to excess deposits of £20,950.

This gives rise to income of £68,802 and as a consequence the revised tax and Class 4 National Insurance 2 due is as follows:

Tax £21.342.80
NIC £1,030.20.

1998/99
For the tax period 1998/99 you declared income of £13,864, profits of £4,281 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure of £19,843 to fund personal expenditure as per the FES. The figure needed to fund your holiday expenditure of £3,649, the amount of £25,000, which was the balance of the accumulated funds required to carry out the renovation of the commercial property. The figure of excess deposits of £21,285, which is based on the figure for 2002/03.

This gives rise to revised profits of £69,777, less the returned profit of £4,281 already returned to HMRC. The amount of revised profits is £65,496 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £21,479.80
NIC £1,074.20

1999/00
For the tax period 1999-00 you declared income of £21,874, profits of £10,894 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure of £19,947 to fund personal expenditure as per the FES. The figure needed to fund your holiday expenditure of £3,707. The figure of excess deposits of £21,917, which is based on the figure for 2002/03.

This gives rise to revised profits of £45,571, less the returned profit of £10,894 already returned to HMRC. The amount of revised profits is £34,677 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £10,225.83
NIC £906.36

<u>2000-01</u>
For the tax period 2000-01 you declared income of £24,144, profits of £9,300 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure of £20,784 to fund personal expenditure as per the FES. The figure needed to fund your holiday expenditure of £3,817. The figure of excess deposits of £22,303, which is based on the figure for 2002/03.

This gives rise to revised profits of £46,904, less the returned profit of £9,300 already returned to HMRC. The amount of revised profits is £37,604 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £10,814.30
NIC £1,296.40

<u>2001-02</u>
For the tax period 2001-02 you declared income of £58,650, profits of £9,914 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure of £20,899 to fund personal expenditure as per the FES. The figure needed to fund your holiday expenditure of £3,885. The figure of excess deposits of £22,638, which is based on the figure for 2002/03.

This gives rise to revised profits of £47,422, less the returned profit of £9,914 already returned to HMRC. The amount of revised profits is £37,508 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £10,679.42
NIC £1,399.02

<u>2002-03</u>
For the tax period 2002-03 you declared income of £48,490, profits of £9,693 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £3,943. The figure of deposits paid into your Barclays account [account number] of £33,040.

This gives rise to revised profits of £36,983, less the returned profit of £9,693 already returned to HMRC. The amount of revised profits is £27,290 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £3,871.34
NIC £1,231.79

<u>2003/04</u>
For the tax period 2003/04 you declared income of £15,000, loss (£1,330) to HMRC.
You declared rental income of £9,000 profits £7,200 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,066 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £9,700. The figure of deposits paid into your Barclays account [account number] of £21,163.

This gives rise to revised profits of £34,929, less the returned profit of £5,870 already returned to HMRC. The amount of revised profits is £29,059 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £6,806.90
NIC £1,955.52

2004/05
For the tax period 2004/05 you declared rental income of £9,000, profits of £6,960 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,167 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Barclays account [account number] of £36,753.

This gives rise to revised profits of £79,720, less the returned profit of £6,960 already returned to HMRC. The amount of revised profits is £72,760 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £23,850.70
NIC £2,568.40

2005-06
For the tax period 2005/06 you declared rental income of £9,000, profits of £6,950 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,300 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Barclays account [account numbers] of £36,340.

This gives rise to revised profits of £79,440, less the returned profit of £6,950 already returned to HMRC. The amount of revised profits is £72,490 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £23,529.70
NIC £2,626.50

2006/07
For the tax period 2006/07 you declared rental income of £9,000, profits of £6,960 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,410 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Barclays account [account numbers] of £48,322.

This gives rise to revised profits of £95,532, less the returned profit of £6,960 already returned to HMRC. The amount of revised profits is £88,572 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £29,754.30
NIC £2,830.72

2007/08
For the tax period 2006/07 you declared rental income of £9,000, profits of £6,922 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,610 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800, the funds required to make a loan to a third party of £200,000. The figure of deposits paid into your Barclays account [account numbers] of £25,960.

This gives rise to revised profits of £269,370, less the returned profit of £6,922 already returned to HMRC. The amount of revised profits is £262,448 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £98,992.70
NIC £4,645.28

2008/09
For the tax period 2008/09 you declared rental income of £9,000, profits of £8,900 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,803 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Barclays account [account numbers], Nationwide [account number] of £33,171.

This gives rise to revised profits of £76,774, less the returned profit of £8,900,960 already returned to HMRC. The amount of revised profits is £67,574 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £20,762.60
NIC £3,046.74

2009-10
For the tax period 2009/10 you declared rental income of £9,000, profits of £8,250 to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £4,746 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Nationwide [account number] of £46,070.

This gives rise to revised profits of £89,616, less the returned profit of £8,205 already returned to HMRC. The amount of revised profits is £81,366 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £25,421.40
NIC £3,427.71

2010/11
For the tax period 2010/11 you declared rental income of £9,000, profits of £8,535 to HMRC.

The basis of my assessment is made-up as follows for the above period: the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Nationwide [account number] & Lloyds [account numbers] of £75,018. The omitted gain on the

disposal of [number] Exning Road, London … of £55,000 as this property was sold on 10 August 2012, which gives rise to capital gains tax of £12,572.00.

This gives rise to revised profits of £113,818, less the returned profit of £8,535 already returned to HMRC. The amount of revised profits is £105,283 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £37,635.20 Capital Gains Tax £12,572.00
NIC £3,666.88

2011/12
For the tax period 2011/12 you declared rental income of £19,000, profits of £17,950 to HMRC

The basis of my assessment is made-up as follows for the above period: the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Nationwide [account number] & Lloyds [account numbers] of £49,323

This gives rise to revised profits of £88,123, less the returned profit of £17,950 already returned to HMRC. The amount of revised profits is £70,173 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £23,164.20
NIC £3,726.46

2012/13
For the tax period 2012/13 you declared rental income of £33,750, profits of £28,165 to HMRC

The basis of my assessment is made-up as follows for the above period: the figure needed to fund your holiday expenditure of £5,442 and the amount of rent received from the units of 181 & 185 Dunstable Road Luton of £38,800. The figure of deposits paid into your Nationwide [account number] & Lloyds [account numbers] of £24,940 do not cover the full year, as there are the following periods of bank statements missing Lloyds 3 December 2012 to 5 April 2013 & Nationwide 13 June 2012 to 5 April 2013. When these missing statements are submitted they may lead to an increase in the figure to be assessed for Tax/National Insurance Contributions. The omitted gain on the disposal of [number] Royston Avenue, London, … of £42,500, as this property was sold on 10 August 2012, which gave rise to capital gains tax of £8,932.00.

This gives rise to revised profits of £69,182, less the returned profit of £28,165 already returned to HMRC. The amount of revised profits is £41,017 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £17,556.80 Capital Gains Tax £8,932
NIC £3,007.08"

59. A Penalty Explanation Letter was issued to Mr Butt on 2 May 2017. This letter stated that, because of his failure to notify chargeability over a lengthy period, the NCA considered Mr Butt's behaviour to be deliberate. The letter also detailed a breakdown of the penalties charged.

60. The NCA (Mr Diedrick) issued a "view of the matter" to Mrs Begum on 2 May 2017. This set out the basis of the tax assessments for the period for 1998-99 to 2011-12 and was in the same in the same format as that sent to Mr Butt (see above). In the letter to Mrs Begum Mr Diedrick explained that for 1998-99 she had not declared any income to HMRC but had, during that year, purchased the Family Home for £40,000 from an unknown source. Mr Diedrick also

said that he had based his assessment on an estimated figure for holiday expenditure for 2005-06 of £2,500 and had used the Retail Price Index ("RPI") to extrapolate this figure backwards and forward to cover the whole of the period from 1998-99 to 2011-12. He had also used the RPI in a similar way to extrapolate the council tax figure of £1,202.71 for 2015-16 backwards to arrive at the council due for 1998-99 to 2012-13.

61. The "view of the matter" letter to Mrs Begum continued:

> "… the figure for [council tax] for 1998/99 was £760.09 but I have apportioned this to cover the last two months of he above year [1998-99] and this equates to £125. The figure of deposits into your Barclays account [account number] of £23,350.86 does not cover the full year, as the bank statements for the period 6 April 1998 to 17 November 1998 are missing. When these statements are submitted this may lead to an increase in the figure to be assessed for Tax/National Insurance Contributions.
>
> This gives rise to an income of £65,578 and as a consequence the revised tax and Class 4 National Insurance due is as follows:
>
> Tax £19,817.20
> NIC £1,074.20
>
> <u>1999/00</u>
> For the tax year 1999/00 you did not declare any income to HMRC.
>
> The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,164, the amount needed to fund your council tax payments of £772. I have used estimated figure of £40,000 to cover the full costs of the extension costs on your residential property. The figure of deposits into your Barclays account [number] of £14,438.08.
>
> This gives rise to income of £57,374 and as a consequence the revised tax and Class 4 National Insurance due is as follows:
>
> Tax £16,260.60
> NIC £1,108.20
>
> <u>2000/01</u>
> For the tax period 2000/01 you did not declare any income to HMRC.
>
> The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,202, the amount needed to fund your council tax payments of £786. The figure of deposits into your Barclays account [number] of £13,655.31
>
> This gives rise to income of £16,643 and as a consequence the revised tax and Class 4 National Insurance due is as follows:
>
> Tax £2,514.36
> NIC £858.06
>
> <u>2001/02</u>
> For the tax period 2000/01 you did not declare any income to HMRC.
>
> The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,235, the amount needed to fund your council tax payments of £798. The figure of deposits into your Barclays account [number] of £14,069.55
>
> This gives rise to income of £17,103 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £2,539.36
NIC £879.76

2002/03
For the tax period 2001/02 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,305, the amount needed to fund your council tax payments of £823. The figure of deposits into your Barclays account [number] of £18,800

This gives rise to income of £21,928 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £3,578.46
NIC £1,211.91

2003/04
For the tax period 2003/04 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,363, the amount needed to fund your council tax payments of £843. The rental income received for 183 Dunstable Road was £6,000 but this figure has been apportioned to cover the last quarter of the 2003/04 tax year, as this unit was only purchased on 14 January 2004, which equates to £1,500. The figure of deposits into your Barclays account [number] of £18,057.98

This gives rise to income of £22,764 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £3,757.58
NIC £1,451.92

2004/05
For the tax period 2004/05 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,438, the amount needed to fund your council tax payments of £870. The rental income received for 183 Dunstable Road of £6,000. The figure of deposits into your Barclays account [number] of £8,907.89

This gives rise to income of £18,216 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £2,721.22
NIC £1,077.68

2005/06
For the tax period 2005/06 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,500, the amount needed to fund your council tax payments of £892. The rental income received for 183 Dunstable Road of £6,000. The figure of deposits into your Barclays account [number] of £7,982.86

This gives rise to income of £17,375 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £2,494.80
NIC £998.40

2006/07
For the tax period 2006/07 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,613, the amount needed to fund your council tax payments of £932. The rental income received for 183 Dunstable Road of £6,000. The funds required to make the loan of £30,000 to a company called Britannia Biscuits Ltd. The figure of deposits into your Barclays account [number] of £13,080.57

This gives rise to income of £52,625 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £12,784.00
NIC £2,471.25

2007/08
For the tax period 2007/081 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,723, the amount needed to fund your council tax payments of £971. The rental income received for 183 Dunstable Road of £6,000. The figure of deposits into your Barclays account [number] of £13,043.99

This gives rise to income of £22,738 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £3,585.26
NIC £1,401.04

2008/09
For the tax period 2008/09 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,691, the amount needed to fund your council tax payments of £960. The rental income received for 183 Dunstable Road of £6,000. The figure of deposits into your Barclays account [number] of £15,644.92

This gives rise to income of £25,296 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £3,852.20
NIC £1,588.88

2009/10
For the tax period 2009/10 you did not declare any income to HMRC.

The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,835, the amount needed to fund your council tax payments of £1,011. The rental income receive for 183 Dunstable Road of £6,000. The figure of deposits into your Barclays account [number] of £5,501.42

This gives rise to income of £15,347 and as a consequence the revised tax and Class 4 National Insurance due is as follows:

Tax £1,774.40
NIC £770.56

2010/11
For the tax period 2010/11 you did not declare any income to HMRC.

> The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £2,892, the amount needed to fund your council tax payments of £1,064. The rental income receive for 183 Dunstable Road of £6,000. The figure of deposits into your Halifax account [number] of £5,501.42 does not cover the full year as the bank statements for the period of 5 February 2011 to 5 April 2011 are missing. When these statements are submitted this may lead to an increase in the figure to be assessed for Tax/National Insurance Contributions.
>
> This gives rise to income of £15,546 and as a consequence the revised tax and Class 4 National Insurance due is as follows:
>
> Tax £1,814.20
> NIC £786.48
>
> 2011/12
> For the tax period 2011/12 you did not declare any income to HMRC.
>
> The basis of my assessment is made-up as follows for the above period: the figure need (sic) to fund your holiday expenditure of £3,085, the amount needed to fund your council tax payments of £1,101. The rental income receive for 183 Dunstable Road of £6,000. The figure of deposits into your Halifax account [number] is not known as the bank statements that cover the period 6 April 2011 to 5 April 2012 have not been submitted, when submitted may give rise to an increase in the figure to be assessed for Tax/National Insurance Contributions for this year
>
> This gives rise to income of £10,186 and as a consequence the revised tax and Class 4 National Insurance due is as follows:
>
> Tax £542.20
> NIC £266.49"

62. A Penalty Explanation letter was sent to Mrs Begum on 2 May 2017. This letter explained that her behaviour was deemed as deliberate because of her failure to notify chargeability over the whole period (ie 1998-99 to 2011-12). It also gave a breakdown of the penalties.

63. The assessments for 1996-97 to 2012-13 on Mr Butt and for 1998-99 to 2011-12 on Mrs Begum were upheld on 5 December 2019 following a review.

64. However, the review established that the penalties issued on 2 May 2017 for 2008-09 to 2010-11 on Mr Butt and for 2009-10 to 2011-12 on Mrs Begum had been issued under the wrong legislation. The Penalty Assessments for the relevant years were therefore reissued to the Mr Butt on 22 January 2020 under the correct legislation resulting in a reduction of the penalties charged on Mr Butt for the period of 1996-97 to 2012-13 to £343,007.99.

65. The Penalty Assessments for the relevant years were similarly reissued to Mrs Begum on 22 January 2020 under the correct legislation but did not result in any change to the amount of penalties charged for the period of 1998-99 to 2011-12.

66. On the 9 January 2020, the Mr Butt and Mrs Begum appealed to the Tribunal on the following grounds:

(1) the qualifying condition is not met for the Respondent to issue the assessments;

(2) the actions of the Appellants were not deliberate, and thus different time limits apply;

(3) the Respondent has reached incorrect factual conclusions as to the taxable income of the Appellants; and

(4) the Penalties have been incorrectly applied.

Further Notices of Appeal were lodged on 27 January 2020.

67. An application by Mr Butt and Mrs Begum for the postponement of the tax assessed (under s 55 TMA) was heard by the Tribunal (Judge Gething) on 27 July 2021. Before the hearing the NCA were advised that, during the course of confiscation proceedings in 2015, it had become apparent that certain rental income that had been assessed on Mr Butt and Mrs Begum belonged to third parties, namely their sons, and not them. Accordingly, it was necessary for the tax assessments on Mr Butt for 2004-05 to 2012-13 to be revised to avoid double counting the rental income for those years.

68. Having considered the outcome of the confiscation proceedings to have "objectively rendered the amended assessments excessive" Judge Gething granted the application and postponed all of the tax. She also issued directions for the further progress of the case.

Criminal Investigation

69. As we have already noted (at paragraph 23, above) the NCA had conducted a criminal investigation into a Luton OCG. As part of its investigation the NCA had recorded meetings of members of the OCG. Reference to one such recording was made in a witness statement, dated 28 November 2012, by Mr Pike who, as we have noted above (at paragraph 49(2)), was at the time a financial investigator employed by SOCA who had conduct of an investigation into the financial affairs of Mr Butt.

70. Mr Pike's witness statement was made on behalf of a Crown Prosecutor in support of an application for a restraint order pursuant to s 61 POCA. Having recorded Mr Butt's arrest (see paragraph 23, above), Mr Pike then referred to meetings between Mr Butt and convicted drug dealers. At paragraph 5(o) of his statement Mr Pike records that:

> "[Mr] Butt has been involved in a number of recorded conversations with other members of the OCG where matters that appear to relate to drug trafficking and finance were discussed. The subjects are not usually directly discussed but on 20 October 2010 Yasdani and Butt were recorded in conversation about money as follows:
>
> Butt: You know this money
>
> Yasdani: Yeah
>
> Butt: This money is not cashed here is it
>
> Yasdani: (inaudible)
>
> Butt: No about what saying; this money, for example, is not the cash from the drugs is it
>
> Yasdani: No, no, no; it's legal
>
> Butt: It is genuine. That is what (?) said that; when you withdraw it from the banks then they ask a hundred questions
>
> Yasdani: Yes they ask a hundred questions
>
> On the same day Rabani and Butt discuss the possibility of £400,000 being transferred from a bank account in Dubai to a bank account in England. There is also evidence recorded about the same time where Butt, Rabani and Yasdani talk about raising funds to secure the release of Khalil at the time he was being held in Holland."

According to Mr Pike's statement, Yasdani and Rabani are Mr Butt's sons and Khalil is his brother.

71. Mr Pike's statement also records that on SOCA officers seized cash from the OCG on seven occasions and that the total amount of money seized was £867,502. On each of the seven occasions the cash was forfeit following uncontested proceedings in the Magistrates Court under POCA.

72. On 5 December 1997, a detention hearing was held at Dover Magistrates Court in respect of $696,000 US Dollars, equivalent to £410,000, that had been seized from the First Appellant's nephew Ayub (full name unknown) under the Drug Trafficking Act 1994.

73. On 19 January 1998, the nephew's solicitors contacted HMCE to advise them that Mr Butt was claiming ownership of the seized £410,000 (which has not been taken into account or assessed as part of the present case). Mr Butt was interviewed by HMCE and stated that he had a legitimate import/export business based in the Netherlands and that the seized cash was to be used for a business deal. He appealed to both the Crown and Divisional Courts for the money to be returned to him on the basis that it was his. However, his appeals were dismissed with the court finding his claim to be, "inherently implausible, preposterous may be a better word."

74. Although not included in the hearing bundle, both the appellants' and NCA's Statement of Facts record that Mr Butt provided the NCA with a statement and a schedule of overseas trips taken by family members which he had funded. Both Statements of Facts also record that Mr Butt and Mrs Begum's sons travelled extensively overseas "during the criminal investigation", with trips being made to Dubai, Saudi Arabia, China, Holland, Spain and Turkey. In evidence Mr Butt denied that, other than for family holidays, he had funded travel expenses for his sons insisting that he did not pay for any "travel for wrongdoing."

ISSUES

75. Although there were differences between the parties as to their formulation, there appeared broad agreement that the following issues arise:

(1) whether the qualifying condition for the Section 317 Notices was met;

(2) whether Mr Butt was resident in the UK for tax purposes during 1996-97 and 1997-98;

(3) the validity of the 'discovery' assessments;

(4) whether the assessments were made in time;

(5) quantum of the assessments; and

(6) Penalties

76. We shall consider each in turn, first setting out the relevant statutory provisions and principles arising in each before applying these to the facts of this case.

Section 317 Qualifying Condition

77. Section 317 POCA provides:

> **The National Crime Agency's general Revenue functions**
>
> (1) For the purposes of this section the qualifying condition is that the National Crime Agency has reasonable grounds to suspect that—
>
> > (a) income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct (whether wholly or partly and whether directly or indirectly), or
> >
> > (b) …

> (2) If the qualifying condition is satisfied the National Crime Agency may serve on the Commissioners of Inland Revenue (the Board) a notice which—
>
> (a) specifies the person or the company (as the case may be) and the period, and
>
> (b) states that the National Crime Agency intends to carry out, in relation to the person or the company (as the case may be) and in respect of the period, such of the general Revenue functions as are specified in the notice.
>
> …
>
> (5) A notice under subsection (2) and a notice of withdrawal under subsection (4) may be in respect of one or more periods.
>
> …
>
> (9) It is immaterial whether a chargeable period or any part of it falls before or after the passing of this Act

78. "Criminal conduct" is conduct which constitutes an offence in any part of the UK or would constitute an offence in the UK if it occurred there (see s 326 POCA). The "general Revenue functions" are such of the functions vested in HMRC as relate to income tax, CGT, corporation tax and NICs (see s 323 POCA).

79. It is common ground that the test for whether there are "reasonable grounds to suspect" is both subjective and objective. It is clear from *O'Hara v Chief Constable of Royal Ulster Constabulary* [1997] AC 286 per Lord Steyn at 293, that the threshold for the existence of reasonable ground for suspicion is low. It is not necessary to have evidence amounting a prima facie case in order to have a reasonable suspicion and that hearsay evidence may be sufficient.

80. As Lord Hope said, in that case (which concerned the statutory power of arrest on "reasonable grounds for suspecting") at 298:

> "… It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in [an arrestable offence]. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point it does not depend on whether the arresting officer himself thought that at the time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, …, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question was provided reasonable grounds for suspicion depends on the

> source of his information and its context, seen in the light of the whole surrounding circumstances."

81. *O'Hara* was applied in relation to s 317 POCA in *Khan v Director of the Assets Recovery Agency* [2006] STC (SCD) 154 and *Fenech v SOCA* [2013] UKFTT 555 (TC) where the Tribunal (Judge Demack and Mr Law) observed, at [100]:

> "… all that s 317(1) requires is that SOCA has reasonable grounds to suspect criminal conduct, and that there is income, however indirect and however little, flowing from it. SOCA does not have to prove that any of the income assessed on Mr Fenech arose from criminal conduct; it merely has to have a reasonable suspicion that he received some income (even if only £1) directly or indirectly from criminal conduct for that year; there is no need to trace the gain into cash."

82. It is accepted that it is for the NCA to establish that the qualifying condition for the Section 317 Notices was met.

83. Therefore, for the purposes of the present case it is for the NCA to establish that Mr Diedrick had an objectively reasonable suspicion that there was criminal conduct and that Mr Butt and/or Mrs Begum received some income, in the years for which they were assessed, either directly or indirectly as a result of that criminal conduct.

84. Mr Butt and Mrs Begum contend that the NCA has failed to establish that s 317 POCA qualifying condition was met on each of the occasions that the Section 317 Notices were issued for the following reasons:

(1) Mr Diedrick's belief that some taxable income of Mr Butt and Mrs Begum had been derived from criminal conduct was unreasonable;

(2) Mr Diedrick had no reasonable grounds to suspect that chargeable taxable income/gains accrued to either Mr Butt or Mrs Begum (the "source issue"); and

(3) The NCA had failed to discharge its burden that it had objectively reasonable grounds for suspecting that income arose in a chargeable period.

We consider each in turn.

Criminal conduct

85. In his oral evidence Mr Diedrick did not shy away from the significance of Mr Pike's statement and his reliance on it when reaching his decision to issue the Section 317 Notices. Mr Ganesan was critical of such reliance being place on an untested and uncorroborated statement which was based entirely on hearsay and had been made for the purposes of an *ex-parte* or without notice application.

86. There was also criticism of Mr Diedrick for relying on the record of the Dover Magistrate's hearing on 5 December 1997 (see paragraph 72, above) without producing that document, particularly in relation to the Section 317 Notices that had been issued in respect of 1997-98, 2012-13 and 1996-97 on 23 March and 25 June 2015 respectively given that he had already issued the Section 317 Notice for 1998-99 to 2011-12 on 13 August 2014.

87. However, we consider that when Mr Diedrick made his decision to issue the Section 317 Notices, albeit relying primarily on Mr Pike's statement, he had formed the genuine suspicion in his own mind that Mr Butt and Mrs Begum had received at least some income directly or indirectly from criminal conduct in the years concerned, thereby satisfying the subjective element of the test. As is clear from *O'Hara*, all that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

88. Given that the information Mr Diedrick acted on need not be based on his own observations and that, as in *O'Hara*, he was entitled to form a suspicion based on what was been told without going on to prove that any facts on which he based his suspicion were in fact true and, having regard to the whole surrounding circumstances, particularly the close family relationships that existed between Mr Butt, Mrs Begum and their adult children who lived with their parents and contributed towards the household bills and purchase of assets, we are of the view that Mr Diedrick's belief that some income of Mr Butt and Mrs Begum (whose evidence was that that she had relied on her husband for financial support) had been derived from criminal conduct was reasonable.

Source Issue

89. This issue was raised by Mr Blades, on behalf of Mr Butt and Mrs Begum, for the first time in his skeleton argument. Although Ms Black, for the NCA, in her closing submissions raised a procedural issue, ie whether in the circumstances the appellants should be permitted to rely on the argument, there was no formal application that it be excluded. As such, and as we heard arguments on it, we consider it appropriate to address the source issue.

90. In essence Mr Blades contends that, as each of the income tax assessments, up to and including 2004-05 was raised pursuant to s 18 of the Income and Corporation Taxes Act 1988 ("ICTA") under case I, II and/or VI and that the assessments from 2005-06 onwards were pursuant to s 5 and/or s 687 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA"), it is clear that:

(1) the suspected income was from a trade or services falling short of a trade;

(2) the trade identified by Mr Diedrick as the source of that income was the trade of money laundering; and

(3) any suspicion that income was received from a trade of money laundering was unreasonable.

91. Mr Blades contends that the transactions entered into by Mr Butt and/or Mrs Begum are not indicative of money laundering but of day to day living. As such, he says, there were no reasonable grounds for Mr Diedrick to suspect that chargeable taxable income/gains accrued to either Mr Butt or Mrs Begum .

92. Before we consider s 319 POCA, on which the NCA relies to contend it is not required to identify the source of the chargeable income or gain, it is necessary to point out that Mr Diedrick's evidence was that the income arising as a result of criminal conduct was "probably" the result of money laundering. However, he did not say that this was the only source of funds. He also said that the personal and travel expenditure and unidentified income was not all related to money laundering (see paragraph 49, above).

93. We also note that the assessments do not refer to any trade and were, in addition to being under the statutory provisions mentioned by Mr Blades, made "in the alternative" under s 319 POCA (see paragraphs 52 – 54, above).

94. Turning to s 319 POCA, this provides:

> **Source of income**
>
> (1) For the purpose of the exercise by the National Crime Agency of any function vested in it by virtue of this Part it is immaterial that the National Crime Agency cannot identify a source for any income.
>
> (2) An assessment made by the National Crime Agency under section 29 of the Taxes Management Act 1970 (assessment where loss of tax discovered) in respect of income charged to tax under Chapter 8 of Part 5 of the Income

> Tax (Trading and Other Income) Act 2005 must not be reduced or quashed only because it does not specify (to any extent) the source of the income.

Section 319 POCA was discussed by the Tribunal (Judge Richard Thomas and Ms Dixon) in *Chadwick v NCA* [2017] UKFTT 656 (TC).

95. Having noted, at [177] – [178], that the assessments in that case charged the person assessed on the profits of a trade (unlike the present case there was not an assessment in the alternative under s 319 POCA) but did not specify the nature of the trade the Tribunal sought submissions on the following questions:

(1) Whether s 319(1) POCA permits an assessment to be made by NCA under Case I of Schedule D or Part 2 ITTOIA without specifying the nature of the trade carried on.

(2) If Case VI/Part 5 ITTOIA is relied on, is the NCA required to show that some services falling short of trading have been provided by the appellant to justify the assessment and if it is what is the nature of those services.

96. At [190] the Tribunal, having considered the responses of the parties, the decision of the Special Commissioner (Mr Adrian Shipwright) in *Rose v Director of the Assets Recovery Agency* [2006] STC (SCD) 472 and the Explanatory Notes accompanying the legislation prior to it coming into effect, observed:

> "What we take from the Explanatory Notes and *Rose* is that an assessment must ordinarily identify the specific trade said to be carried on, but an assessment made by NCA need not identify a particular trade if NCA cannot identify what the trade is. But s 319(1) does not allow them to simply point to unexplained receipts and say, without further evidence, they are the profits or turnover of an unidentified trade. Nor does it help NCA if they have in fact identified a source of trading. Here NCA have said that the trade they consider the appellant was carrying on and which was therefore the source of unexplained sums in the appellant's bank account was the trade of money laundering."

97. Mr Blades, relying on this passage from *Chadwick*, contends that it is clear that s 319 POCA does not assist the NCA in the present case as a trade, ie money laundering, has been identified.

98. However, this passage from *Chadwick* is not only *obiter* but it is clearly a discussion of the position in relation to the assessments and not the s 317 condition. As such, we do not consider it supports the argument advanced on behalf of the appellants in relation to that condition. If anything we consider it to favour the NCA's case given that at [131] of *Chadwick* the Tribunal found that the NCA had reasonable grounds to suspect that the appellant in that case was "connected with or involved in money laundering".

99. It went to note, at [134], that it was not "explicitly" indicated what income arose from criminal activity which gave reasonable grounds for suspecting that income arising was due to the appellant's or another's criminal activity but found, at [135], the suspicion, on the basis of large sums appearing in the appellant's bank statements which were not commensurate with her known income, to be objectively reasonable. This was sufficient for the Tribunal in *Chadwick* to conclude at [136] that the qualifying condition in s 317(1) POCA was met

100. In the present case Mr Diedrick in his "view of the matter" letters set out the basis of his assessments (see paragraphs 57 – 58, above in relation to Mr Butt and paragraphs 60 – 61, above in relation to Mrs Begum). Having already concluded that Mr Diedrick's belief that Mr Butt and Mrs Begum had received income arising from criminal conduct was reasonable (see paragraph 88, above), we consider the basis of his assessments, as set out in the "view of the

matter" letters, was sufficient for him to have had reasonable grounds to suspect that taxable income and/or chargeable gains accrued to Mr Butt and Mrs Begum in the years for which they were assessed. It is not necessary, as in *Fenech*, for the NCA to establish that any of income assessed arose from criminal conduct.

Chargeable Period

101. Although it is contended on behalf of Mr Butt and Mrs Begum that the NCA has not addressed whether that it had objectively reasonable grounds for suspecting that income arose in a chargeable period we consider that this has been satisfactorily dealt with by the "view of the matter" letters which set out the chargeable periods in which the income/gains arose.

Conclusion on Section 317 Qualifying Condition

102. For the reasons above we conclude that the NCA has established that the s 317 POCA qualifying condition has been met in this case.

Residence

103. It is contended on his behalf that Mr Butt was not resident in the UK before 1998-99. However, it is not disputed that when he was in the UK the Family Home was available for his use and he did, in fact, stay there. He says it was the occasional night whereas Mrs Begum says it was for a week or so at a time and that he lived in both the UK and the Netherlands.

104. That a person may reside in more than one place is well established. As Viscount Cave LC observed In *Levene v Commissioners of Inland Revenue* [1928] AC 217 at 223:

> "… a man may reside in more than one place. Just as a man may have two homes – one in London and the other in the country – so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country. Thus, in Cooper v Cadwallader, an American resident in New York who had taken a house in Scotland which was at any time available for his occupation, was held to be resident there, although in fact he had only occupied the house for two months during the year; to the same effect is the case of *Lowenstein v de Salis*."

105. Although Mr Butt may not have owned the Family Home throughout the period (see above) it is clear that, as a matter of fact, it was available for his use at any time including during 1996-97 and 1997-98. Indeed it is where his wife and five children lived during that period. As such, we consider that Mr Butt was resident in the UK (and possibly also resident in the Netherlands) during those years.

Discovery Assessment

106. It is common ground that it is for the NCA to establish the relevant conditions for the issue of a discovery assessment under s 29 TMA have been met and that the assessment was validly made and in time (see *Burgess & Brimheath Developments Ltd v HMRC* [2015] UKUT 578 (TCC)). It is also accepted that if the NCA does establish that the discovery assessments were valid and in time, s 50(6) TMA applies, as it does for in-date assessments, and the assessment "shall stand good", with the burden resting on the taxpayer to displace it (see eg *Johnson v Scott* (*Inspector of Taxes*) 52 TC 383 at 393 as approved by the Court of Appeal in that case at 403).

107. Section 29 TMA provides:

> **29.— Assessment where loss of tax discovered**
>
> (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) that any relief which has been given is or has become excessive,

the officer, or as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) …

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b) in a case where a notice of enquiry into the return was given—

(i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or

(ii) if no such partial closure notice was issued, issued a final closure notice,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

108. Having referred to it above (at paragraph 106) s 50(6) TMA provides:

50.— Procedure.

…

(6) If, on an appeal notified to the tribunal, the tribunal decides-

…

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

109. We should also mention s 118(7) TMA which provides:

118.— Interpretation.

…

> (7) In this Act references to a loss of tax or a situation brought about deliberately by a person include a loss of tax or a situation that arises as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.

110. At paragraph 108 of his skeleton argument and again in his oral submissions Mr Blades confirmed that it was accepted that if the s 317 POCA qualifying condition was satisfied, ie the NCA had reasonable grounds for suspecting that chargeable income/gains arose to Mr Butt and Mrs Begum as a result of criminal conduct, it was not disputed that the NCA had discovered a loss of tax.

111. Given our conclusion that the s 317 POCA condition has been satisfied it is not necessary to consider whether the NCA discovered a loss of tax, it has been accepted it has. Even if this was not case, we agree with Ms Black that, given that both Mr Butt and Mrs Begum clearly has access to funds and a lifestyle that exceeded their declared income for which there is no other justifiable or credible explanation, there was a loss of tax for each of the years assessed.

112. Therefore, if made in time (for which see below), the assessments on Mr Butt for 1996-97 and 1997-97 and on Mrs Begum were, in the absence of any other ground for disputing it, appear to have been validly made.

113. Mr Butt accepts that for those years he filed a tax return he did not include any rental income despite it being received by him during that period. However, Mr Blades submits that this cannot be part of the loss of tax discovered. He says that the rental income was not included in the s 29 TMA assessment and therefore whether Mr Butt deliberately omitted it from his tax return has no bearing on the validity of the assessment. This is, he says, because there is nothing on the face of the assessments to suggest that rental income has been assessed.

114. However, this argument fails to take account of the fact that the assessments on Mr Butt, unlike those in *Chadwick*, specifically refer to s 319 POCA. Given that s 319(2) POCA provides that an assessment under s 29 TMA "must not be reduced or quashed because it does not specify (to any extent) the source of the income" we do not consider this to be a ground on which to conclude the assessments are invalid.

115. In any event it is clear from the "view of the matter letter" that it is incorrect to say that it is only rental income that has been assessed. As such, it is necessary to consider whether the loss of tax was attributable to the deliberate conduct of Mr Butt as the NCA contends it was.

116. The meaning of "deliberate" (in relation to whether there was a deliberate inaccuracy in a document) was considered by the Supreme Court in *HMRC v Tooth* [2021] 1 WLR 2811 in which it said, at [37]:

> "As Mr Julian Ghosh QC correctly submitted for Mr Tooth, section 29(4) [TMA] read on its own suggests that to fall foul of the first condition (otherwise than by carelessness) the taxpayer must deliberately have brought about the "situation" mentioned in section 29(1), which in this case is that his self-assessment was insufficient.

It continued, at [43]:

> "… Deliberate is an adjective which attaches a requirement of intentionality to the whole of that which it describes, namely "inaccuracy". An inaccuracy in a document is a statement which is inaccurate. Thus the required intentionality is attached both to the making of the statement and to its being inaccurate."

117. In our view it is more likely than not that Mr Butt knew that he had not declared all of his income in each of his tax returns. As such it must follow that this omission leading to the

loss of tax was, in each case, deliberate and therefore sufficient to satisfy the condition in s 29(4) TMA. However, even if this were not the case, given that it is accepted that there was a tax loss, this is not something that an officer could have been aware of at the time he ceased to be entitled to commence an enquiry into each of the returns and therefore the condition in s 29(5) TMA would also have been satisfied.

118. Finally, before we consider whether the assessments were in time it is necessary to consider an argument advanced by Mr Blades, relying on *Chadwick*, that the assessments are invalid for seeking to charge tax on alternative bases where the tax payable under those alternative bases differs in quantum. Although the Tribunal in *Chadwick*, at [174], was "inclined" to think it was "not a legitimate way of proceeding", it had previously noted (at [171] and [172] that, having been asked for submissions on the issue, there was agreement between the parties that in principle alternative assessments could be made and if the tax was different it could be adjusted under s 50 TMA. As such, we do not consider *Chadwick* supports the proposition advanced by Mr Blades and accordingly reject this argument on the validity of the assessments.

Time Limits

119. Having concluded that the assessments were valid, it is necessary to consider whether they were made in time.

120. Section 34 TMA provides:

> **34.— Ordinary time limit of 4 years**
>
> (1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax, capital gains tax or to tax chargeable under section 394(2) of the Income Tax (Earnings and Pensions) Act 2003 may be made at any time not more than 4 years after the end of the year of assessment to which it relates.
>
> (2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment.
>
> (3) In this section "assessment" does not include a self-assessment

121. However that time limits may be extended under s 36 TMA. This provides:

> **36.— Loss of tax brought about carelessly or deliberately etc**
>
> (1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).
>
> (1A) An assessment on a person in a case involving a loss of income tax or capital gains tax—
>
> (a) brought about deliberately by the person,
>
> (b) attributable to a failure by the person to comply with an obligation under section 7,
>
> …
>
> may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).

> (1B) In subsections (1) and (1A) references to a loss brought about by the person who is the subject of the assessment include a loss brought about by another person acting on behalf of that person.

122. Prior to 6 April 2010 s 36(1) TMA provided that an assessment could be made to make good a loss of income or capital gains tax that was attributable to the “fraudulent or negligent” conduct of that person at any time “not later than 20 years” after the end of the year of assessment to which it related.

123. All of the assessments in relation to Mr Butt were issued on 2 December 2015 (see paragraph 51, above).

124. Therefore, the assessments for 2011-12 and 2012-13 fall within the standard four-year time limit of s 34 TMA and are in time.

125. However, the assessments for the years from 1996-97 to 2010-11 will only be within the s 36 TMA extended time limits if the NCA can establish that the loss of tax was either brought about deliberately by Mr Butt or was a result of his failure to notify HMRC of a liability to tax under s 7 TMA in relation to those years where no returns were submitted. Given our conclusion (at paragraph 117, above) that Mr Butt deliberately omitted to include income in his tax returns leading to a loss it follows that the extended time limit in s 36 TMA applies. As such, the assessments on Mr Butt were made in time.

126. Similarly, with regard to Mrs Begum all of the assessments on Mrs Begum were issued on 2 December 2015 (see paragraph 51, above). As such, the assessment for 2011-12 is within the s 34 TMA four year time limit.

127. The assessments for earlier years, 1998-99 to 2010-11, can only fall within the extended s 36 TMA time limit of the loss of tax was either brought about deliberately by Mrs Begum or is attributable to her failure to notify HMRC of a liability to tax under s 7 TMA.

128. The NCA contends that Mrs Begum deliberately failed to notify taxable income to HMRC and therefore s 36 TMA applies. Mr Blades contends that Mrs Begum, who accepts that she had income and did not file any tax returns, did not knowingly bring about a loss of tax. However, we disagree. Although Mrs Begum relied on Mr Butt, an individual is nevertheless responsible for his or her own tax affairs. This is clear from the many decisions of the Tribunal in which an appellant has sought to rely on a third party to do something he or she should have done.

129. We also consider that Mrs Begum cannot properly rely on what Mr Blades described not being fortunate enough to have received a good standard of education. As recognised by Simon Brown J in *Neal v Customs and Excise Commissioners* [1988] STC 131 at 136, albeit in relation to VAT, there is a distinction between the primary law including the requirement to notify liability and other aspects which less directly impinge upon such liability. In our view Mrs Begum would have known that there was a requirement to notify HMRC of a liability to tax but deliberately chose not to so. Therefore, the extended time limit of s 36 TMA applies and the assessments were made on time.

Quantum

130. The basis on which Mr Diedrick made the assessments on Mr Butt and Mrs Begum is set out in the respective “view of the matter” letters he issued to them on 2 May 2017 (see paragraphs 57-58, above in relation to Mr Butt and paragraphs 60-61, above in relation to Mrs Begum).

131. In relation to the assessments on Mr Butt as he did not declare any income for 1996-97 Mr Diedrick based his assessment on the purchase of 179 – 185 Dunstable Road and estimated a sum based on the Family Expenditure Survey ("FES") to account for personal expenditure.

132. It has been argued on his behalf that Mr Butt was not resident in the UK during 1996-97. However, for the reasons above (see paragraphs 103 – 105) we disagree. Mr Butt was therefore liable to tax that year. Additionally, Mr Butt says that he did not incur the entirety of the purchase price for the Dunstable Road property and that the conversion costs estimated by Mr Diedrick are excessive. However, these are merely assertions on his part and are not corroborated by any documentary evidence.

133. No income was declared by Mr Butt for 1997-98. Mr Diedrick based his assessment on the basis of his estimate of Mr Butt's personal expenditure, using the FES, and holiday expenditure. He also estimated the cost of conversion of the Dunstable Road property in addition to including a sum for excess deposits which, in the absence of bank statement he had calculated on the basis of those for 2002-03 which he had extrapolated backwards using the Retail Price Index ("RPI"). Although Mr Butt contends he was not resident during 1997-98 we have found that this is not case. Similarly, as with 1996-97 Mr Butt's assertions in relation to his personal and holiday expenditure and cost of renovations are not supported by any other evidence.

134. The assessments for 1998-99 to 2002-03 (inclusive) were based on Mr Diedrick's assessment of the personal and holiday expenditure of Mr Butt, the balance of income required to complete the renovation and excess deposits (based on the 2002-03 accounts). Although Mr Butt did declare some income for those years and accepts he was UK resident from 1998-99 he contends the amounts assessed were excessive. However, no evidence has been produced in support of his assertions on the matter.

135. The 2003-04 assessment was also made on a similar basis to earlier years but included an estimated amount for rent received for 181 and 185 Dunstable Road as well as unexplained deposits paid into Mr Butt's bank/building society account(s). Assessments for 2004-05 to 2011-12 (inclusive) were also made on a similar basis. However, the assessment for 2007-08 also included a £200,000 loan to a third party. The assessment for 2010-11 included an assessment for the capital gain on the disposal of the Exning Road property and the assessment for 2012-13 included a gain on the disposal of the Royston Avenue property.

136. Mr Butt said that the loan was funded by from the proceeds of sale of a Dutch property. Although the proceeds of sale from that property have not been included in the assessments we agree with Ms Black who questions the credibility of Mr Butt's explanation which would have meant that he had brought large sums of cash to the UK and retained it at home over a long period of time even though he had said that large amounts of case were not kept at home.

137. Although Mr Butt accepts that the disposal of the Exning Road property is "prima facie a taxable disposal" he says the gain assessed is excessive as it does not include any relevant expenses. Mr Butt also accepts that he did make a disposal of the Royston Avenue property in 2012-12. While Mr Diedrick did include the purchase and sale information provided to him, in the absence of any further information from Mr Butt he was unable to and did not make any further deductions to the amounts assessed.

138. Turning to Mrs Begum who did not declare any income for any of the years assessed. For the years in question, 1998-99 to 2011-12, Mr Diedrick based his assessments on the amounts he estimated Mrs Begum required to pay her council tax, her holiday expenditure and deposits into her bank account. In addition for 2003-04 and subsequent years to 2011-12 he also included rental income for the Dunstable Road property. However, other than the assertions of Mr Butt and Mrs Begum there is no evidence to contradict these assessments.

139. We appreciate that Mr Davidson did attempt to clarify matters in his Reports. However, as he relied solely on the figures provided to him by Mr Butt, Mrs Begum and their advisers, which he accepted without further scrutiny, we are unable to find anything in those Reports that support the assertions upon which Mr Butt and Mrs Begum rely.

140. Both Mr Blades and Mr Ganesan argue that even if we reject the case advanced by Mr Butt and Mrs Begum in relation to them, the assessments are in any event excessive and have overcharged Mr Butt and Mrs Begum to tax.

141. However, it appears to us that Mr Butt and Mrs Begum's main ground of complaint regarding the assessments is similar to that of the appellant in *Johnson v Scott* who argued that there was no evidence that the Commissioners in that case, and the NCA in this, could have arrived at their determinations as the only evidence advanced by the Crown, other than some agreed figures, was "pure conjecture on the part of the Tax Inspector."

142. Walton J, whose comments were approved by the Court of Appeal, said at 393:

> "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. … 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. So far from representing an inference that the commissioners did not appreciate the inspector's figures fully, this demonstrates that they did.

143. In the present case it is therefore necessary to consider whether figures in the assessments are "fair". In this regard we agree with Ms Black who contends that the assessments were fair in that they were calculated and issued on the basis of the information it held at the relevant time and included the funds required for the purchase of the properties, holiday expenditure and the lifestyle of Mr Butt and Mrs Begum, the unexplained bank deposits, omitted rental income and omitted capital gains.

144. Having concluded that the amounts were assessed were "fair", the long established effect of s 50(6) TMA is that the assessments shall "stand good" unless the appellants, in this case Mr Butt and Mrs Begum, satisfy the Tribunal upon sufficient evidence that the assessment should be reduced or set aside. The NCA is not required to establish that the assessments are correct (see *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657).

145. In our judgment Mr Butt and Mrs Begum have not produced sufficient evidence for us to either reduce or set aside the assessments which accordingly must therefore stand good.

Penalties

146. Penalties have been charged on Mr Butt under s 7 TMA (for 1996-97 and 1997-98), s 95 TMA (for 1998-99 to 2007-08) and under schedule 24 to the Finance Act 2007 (for 2008-09 to 2012-13).

147. In relation to 1996-97 and 1997-98, s 7 TMA provided:

> **7.— Notice of liability to income tax and capital gains tax**.

(1) Every person who—

(a) is chargeable to income tax or capital gains tax for any year of assessment, and

(b) has not receive a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains

shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.

…

(8) If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax—

(a) in which he is assessed under section 9 or 29 of this Act in respect of that year, and

(b) which is not paid on or before the 31st January next following that year.

148. For Mr Butt it is contended that as he was not resident in 1996-97 and 1997-98 and had had not chargeable income or gains for those and was therefore not required to file a tax return and therefore no penalty could arise under s 7(8) TMA. However, we have concluded that Mr Butt was resident (see paragraphs 103 – 105, above) and that he was validly assessed to tax for those years. In the circumstances he was required to notify HMRC of his liability to tax. As he did not do so he is therefore liable to a penalty under s 7(8) TMA.

149. For 1998-99 to 2007-08 s 95 TMA (which was repealed by the Finance Act 2007 in respect of documents relating to tax periods commencing on or after 1 April 2008) provided:

95.— Incorrect return or accounts for income tax or capital gains tax

(1) Where a person fraudulently or negligently—

(a) delivers any incorrect return of a kind mentioned in section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act), or

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of income tax or capital gains tax, or

(c) submits to an inspector or the Board or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax or capital gains tax,

He shall be liable to a penalty not exceeding the amount of the difference specified in subsection (2) below.

(2) The difference is that between—

(a) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable), and

(b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.

(3) The relevant years of assessment for the purposes of this section are, in relation to anything delivered, made or submitted in any year of assessment, that, the next following, and any preceding year of assessment;

150. Mr Blades contends that there is no difference between the tax payable and that declared on Mr Butt's tax returns and that Mr Butt has not deliberately omitted to include income in his returns. However, having upheld the assessments for 1998-99 to 2007-07 and for the reasons above we disagree.

151. For the remaining years the provisions imposing penalties on taxpayers who make errors in certain documents, including tax returns, are contained in schedule 24 to the Finance Act 2007.

152. Paragraph 1 provides:

> **Error in taxpayer's document**
> (1) A penalty is payable by a person (P) where—
>
> (a) P gives HMRC a document of a kind listed in the Table below [which includes a self-assessment tax return] and
>
> (b) Conditions 1 and 2 are satisfied.
>
> (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
>
> (a) an understatement of a liability to tax,
>
> (b) a false or inflated statement of a loss, or
>
> (c) a false or inflated claim to repayment of tax.
>
> (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.

153. Paragraph 3 provides:

> **Degrees of Culpability**
> (1) for the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—
>
> (a) "careless" if the inaccuracy is due to failure by P to take reasonable care,
>
> (b) "deliberate but not concealed" if the inaccuracy is deliberate on P's part and P does not make arrangements to conceal it, and
>
> (c) "deliberate and concealed" if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of inaccurate figures).
>
> (2) An inaccuracy in a document given by P to HMRC, which was neither careless or deliberate on P's part when the document was given, is to be treated as careless if P—
>
> (a) discovered the inaccuracy at some later time, and
>
> (b) did not take reasonable steps to inform HMRC.

154. The amount of a penalty, payable under paragraph 1, is set out in paragraph 4. In so far as it applies to the present case, paragraph 4(2) provides that the penalty for careless action is 30% of the potential lost revenue; for deliberate but not concealed action, 70% of the potential lost revenue; and for deliberate and concealed action 100% of the potential lost revenue.

155. The "potential lost revenue" is defined in paragraphs 5 – 8 but for present purposes it is only necessary to refer to paragraph 5(1) which provides that:

> … the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

156. Paragraph 9 provides:

> **Reductions for disclosure**
> (A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1 A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.
>
> (1) A person discloses an inaccuracy, a supply of information or withholding of information, or a failure to disclose an under-assessment by—
>
> (a) telling HMRC about it,
>
> (b) giving HMRC reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and
>
> (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.
>
> (2) Disclosure—
>
> (a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
>
> (b) otherwise is "prompted".
>
> (3) In relation to disclosure "quality" includes timing, nature and extent.

157. Under paragraph 10(1) HMRC "must" reduce the standard percentage of a person who has made a disclosure and who would otherwise be liable to a penalty. However, the table in paragraph 10(2) sets out the extent of any reduction which "must" not exceed the minimum penalty. For a prompted deliberate and not concealed error this is 35% of the potential lost revenue.

158. HMRC may also reduce a penalty because of "special circumstances" under paragraph 11 although the ability to pay or the fact that a potential loss from one taxpayer is balanced by a potential payment from another are precluded from being special circumstances by paragraph 11(2).

159. On an appeal against a decision that a penalty is payable the Tribunal may, under paragraph 17(1), affirm or cancel HMRC's decision. However where the appeal is against the amount of a penalty paragraph 17(2) allows the Tribunal to substitute HMRC's decision for another decision provided that it was within HMRC's power to make the substituted decision.

160. With regard to a reduction of a penalty in relation to special circumstances (pursuant to paragraph 11), under paragraph 17(3), the Tribunal may only substitute its decision for that of HMRC if it "thinks that HMRC's decision in respect of the application of paragraph 11 was flawed." If so, paragraph 17(6) provides that:

> "Flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

161. It is contended on behalf of Mr Butt that he did not deliberately omit income from his tax returns. However, for the reasons above we reject this argument and consider that Mr Butt deliberately omitted to declare the income on which he was subsequently assessed. As such, we agree with Ms Black that the inaccuracies in Mr Butt's tax returns were deliberate and although not concealed were prompted.

162. The reduction for disclosure given to Mr Butt by the NCA was 35% for the s 95 TMA penalties giving a penalty of 65% and was 20% for the schedule 24 penalties giving a penalty of 63%. We agree with Ms Black that, as Mr Butt provided minimal and limited documentation to the NCA, that this level of reduction was appropriate.

163. Penalties were charged on Mrs Begum under s 7 TMA for 1998-99 to 2008-09 and under schedule 41 to the Finance Act 2008 for 2009-10 to 2011-12. The NCA granted a reduction of 35% to the penalties under s 7 TMA and 20% for the penalties under schedule 41 because of the, albeit limited, disclosure given.

164. It is not disputed that Mrs Begum did not file any tax returns or notify HMRC of her liability to tax. We have found that this was deliberate on her part (see paragraphs 128 and 129, above). It must therefore follow that she is liable to a penalty under s 7(8) TMA for1998-99 to 2008-09.

165. Section 7(8) TMA was repealed by paragraph 25(a)(i) of schedule 41 to the Finance Act 2008 with effect from 1 April 2010. However, paragraph 1 of schedule 41 to that Act 2008 provides that:

> a penalty is payable by a person (p) where P fails to comply with an obligation specified in the Table below (a 'relevant obligation')

Included in paragraph 1 Table, as a "relevant obligation", is the obligation to notify HMRC of a liability to tax under s 7 TMA.

166. Paragraph 5 of schedule 41 defines the various levels of culpability and provides:

> **5. Degrees of culpability**
> (1) A failure by P to comply with a relevant obligation is—
>
> (a) "deliberate and concealed" if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
>
> (b) "deliberate but not concealed" if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.

167. Paragraph 6 provides:

> **6. Amount of penalty: standard amount**
> (1) This paragraph sets out the penalty payable under paragraph 1.
>
> (2) If the failure is in category 1, the penalty is—
>
> (a) for a deliberate and concealed failure, 100% of the potential lost revenue,
>
> (b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and
>
> (c) for any other case, 30% of the potential lost revenue.
>
> …

A failure is in "category 1" if it "involves a domestic matter", ie if it results in a potential loss of revenue and does not involve either an offshore matter or an offshore transfer (see paragraph 6A(1) and (6) of schedule 41).

168. "Potential lost revenue" is "so much of any income tax or capital gains tax to which P is liable in respect of the tax year as by reason of the failure is unpaid on 31 January following the tax year" (see paragraph 7 of schedule 41).

169. Paragraphs 12 and 13 of schedule 41 provide:

12. Reductions for disclosure

(1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure.

(2) P discloses a relevant act or failure by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

…

(3) Disclosure of a relevant act or failure—

(a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

…

13.

(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

Standard %	***Minimum % for prompted disclosure***	***Minimum % for unprompted disclosure***
30%	case A: 10% case B: 20%	case A: 0% case B: 10%
45%	case A: 15% case B: 30%	case A: 0% case B: 15%
60%	case A: 20% case B: 40%	case A: 0% case B: 20%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
150%	75%	45%
200%	100%	60%

170. Paragraph 17 makes provision for an appeal against a decision of HMRC or, as in the present case where it has adopted revenue functions, the NCA to charge a penalty and/or the amount of penalty charged. On an appeal the Tribunal may, under paragraph 18, affirm the

decision of HMRC (or the NCA) or substitute that decision for another decision that HMRC (or the NCA) had the power to make.

171. The NCA contend that, as she did not notify her liability to tax, Mrs Begums's behaviour was "deliberate but not concealed" (as defined in paragraph 5(1)(b)). We agree. Also in view of the limited disclosure given we consider the reductions granted by the NCA to be appropriate.

CONCLUSION

172. Therefore, for the reasons above the appeals of Mr Butt and Mrs Begum are dismissed and the assessments and penalties confirmed in the amounts set out in the tables appended below.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

173. 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: 21st SEPTEMBER 2023

APPENDIX

Mohammed Butt Table of Assessments/Penalties

Year	Income Assessed £	Tax Payable £	Class 4 NIC £	Capital Gain £	CGT £	Total Tax £	Penalties £
1996-97	220,000	82,285.00	1,008.20	-	-	83,293.20	54,136.03
1997-98	68,802	21,342.80	1,030.20	-	-	22,373.00	14,542.45
1998-99	65,496	21,479.60	1,074.20	-	-	22,553.80	14,659.97
1999-00	34,677	10,225.83	906.36	-	-	11,132.19	7,235.92
2000-01	47,604	14,814.30	1,296.40	-	-	16,110.70	10,471.96
2001-02	56,475	18,265.82	1,399.02	-	-	19,664.84	12,795.15
2002-03	47,290	14,448.04	1,450.54	-	-	15,898.58	10,246.74
2003-04	29,358	6,394.50	1,873.04	-	-	8,267.54	5,208.55
2004-05	33,960	8,330.70	2,180.40	-	-	10,511.10	6,832.22

2005-06	33,690	8,009.60	2,238.60	-	-	10,248.20	6,661.33
2006-07	49,772	14,234.40	2,442.72	-	-	16,677.12	10,840.06
2007-08	223,586	83,447.90	4,256.66	-	-	87,704.56	57,007.98
2008-09	29,016	5,803.20	1,886.48	-	-	7,689.68	4,844.50
2009-10	42,566	9,901.40	2,948.08	-	-	12,849.48	8,095.17
2010-11	191,483	77,117.00	4,528.88	44,900	8,082	89,727.88	56,528.56
2011-12	31,373	7,644.20	2,173.32	-	-	9,817.52	6,185.04
2012-13	2,217	443.40	0.00	31,900	7,722.70	8,166.10	5,144.64
Totals	**1,207,365**	**404,187.69**	**32,693.10**	**76,800**	**15,804.70**	**452,685.49**	**291,436.27**

Mrs Mahfooz Begum Table of Assessments/Penalties

Year	Income Assessed £	Tax Payable £	Class 4 NIC £	Total Tax £	Penalties £
1998-99	65,578	19,817.20	1,074.20	20,891.40	13,579.41
1999-00	57,374	16,260.20	1,108.20	17,368.80	11,289.72
2000-01	16,643	2,514.36	858.06	3,372.42	2,192.07
2001-02	17,103	2,539.36	879.76	3,419.12	2,222.43
2002-03	21,928	3,578.46	1,211.91	4,790.37	3,113.74
2003-04	16,212	2,296.34	920.56	3,216.90	2,740.99
2004-05	17,359	2,532.68	1,009.12	3,541.80	2,302.17
2005-06	16,518	2,306.26	929.84	2,236.10	2,103.47
2006-07	52,626	12,784.00	2,471.66	15,255.66	9,915.91
2007-08	22,738	3,585.26	1,401.04	4,986.30	3,241.10
2008-09	25,296	3,852.20	1,588.88	5,441.08	3,536.70
2009-10	15,347	1,774.40	770.56	2,544.96	1,603.33

2010-11	15,546	1,814.20	786.48	2,600.68	1,638.43
2011-12	10,186	542.20	266.49	808.69	509.47
Totals	**370,364**	**76,197.52**	**15,276.76**	**91,474.28**	**59,988.94**