[2011] UKUT 419 (TCC)

Appeal number: FTC/05/2011

INCOME TAX — relief for expenditure — ITTOIA s 34 — whether expenditure wholly and exclusively incurred for purposes of trade — inadequate findings of fact by First-tier Tribunal — appeal allowed and case remitted to First-tier Tribunal for re-hearing

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

CHRISTOPHER HUHTALA **Appellant**

- and –

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

Tribunal: Judge Colin Bishopp

Sitting in public in London on 22 September 2011

David Daly, counsel, instructed by Duncan Hamilton, accountant, for the Appellant

Denis Edwards, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

1. This is an appeal against a decision of the First-tier Tribunal (Judge Radford and Mr Roger White) by which it dismissed the appellant's appeal against a closure notice issued by HMRC in respect of the appellant's income tax return for the year 2006-07. The essential issue is whether HMRC should have allowed the appellant's claim for relief of £10,000, a round sum representing, he says, various costs he incurred while undertaking the research necessary for a book he proposed to write.

2. As the First-tier Tribunal ("F-tT") found, the appellant is an established author (using a nom de plume) and journalist. He lives in England, in a London suburb, but also has a boat which is normally moored on the Thames. He used the boat as the means of travelling along the river to take photographs and obtain material for the writing of a book about the river which, as the F-tT recorded, he hoped to have published in time for the 2012 Olympic Games. I was not told whether that hope had neared realisation.

3. In early 2006 he decided to undertake further research, again using the boat, but in France. The boat was moved to Port Grimaud, where it remained moored for some months. As the F-tT recorded, the appellant's intention was to gather stories about the people frequenting the pontoon at which the boat was moored, though he also undertook other work while he was there. He and his wife lived on the boat while it was at Port Grimaud. The F-tT's decision records the £10,000 in issue as the "expenditure claimed for moving, mooring and living on the boat in the South of France".

4. HMRC took the view that the expenditure could not be deducted because of the provisions of s 34 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA"), which provides that

> "(1) In calculating the profits of a trade, no deduction is allowed for—
>
> (a) expenses not incurred wholly and exclusively for the purposes of the trade, or
>
> (b) losses not connected with or arising out of the trade.
>
> (2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade."

5. Their position, and the underlying basis of the refusal of relief, is that the expenditure was not incurred "wholly and exclusively for the purposes of the trade" because it encompassed not merely moving the boat to Port Grimaud and mooring it there, but also the cost of living on it. They also rely on the fact that the appellant undertook other work, unrelated to the writing of the book, while at Port Grimaud. Mr Denis Edwards of counsel, representing HMRC before me—he did not appear below—made the point that the claimed £10,000 represented an apportionment (half, rounded down) of the total expenditure incurred, and the very fact that there had been an apportionment was fatal to the appellant's case since it was inconsistent with the proposition that the expenditure was wholly

incurred for the purposes of the trade. Mr Edwards added that relief was not available for the additional reason that the expenditure was not incurred exclusively for the purposes of the trade, since some of it related to the living costs of the appellant and his wife, or to the undertaking of other business activities. Such expenses, plainly, would be incurred regardless of the appellant's intention to write a book. These arguments were, in essence, accepted by the F-tT.

6. For the appellant, Mr David Daly, counsel who also did not appear below, argued that the F-tT's conclusion that the expenses had a duality of purpose, by its acceptance of HMRC's first argument, was flawed because it was incomplete. He acknowledged that, taking the expenses the appellant had incurred overall, there was some duality of purpose but, he said, the tribunal had not gone on to dissect the expenditure in order to determine whether any of it fell within ITTOIA s 34(2).

7. I am bound to say that the appellant's claim to HMRC was presented in a confusing and, I think, incorrect manner, since it was linked (or appeared to be linked) to the cost of renting a small flat in Port Grimaud, divided by two in order to reflect an element of personal use. Against that background it is not altogether surprising that the claim was disallowed, and it is equally not surprising that the F-tT dismissed the appeal. However, it became apparent to me as the hearing proceeded, and was confirmed by a breakdown of the claim which was within the bundle of documents produced for the F-tT hearing and also provided to me, that the cost of renting a flat had been introduced, not as the measure of the claim but as a yardstick of reasonableness, and that the claim was in fact made up of a number of items, none of which appeared to include living costs—the major heads were the cost of moving the boat, the mooring fees and some repair charges.

8. Though I entertain some doubts about the repair charges, it seems to me to be at least arguable that the cost of moving the boat and mooring it can be dissected and a decision taken about whether they are or are not excluded from relief by s 34. There may need to be some further dissection of the individual items. Unfortunately, as the F-tT did not address this point it did not make any findings of fact on which a decision might be based.

9. I came, therefore, to the conclusion, as I indicated to the parties during the course of the hearing, that the F-tT's failure to consider s 34(2) required me to allow the appeal. As I have said, there are no findings of fact directed to this point from which I might make the decision myself, and it is necessary to remit the matter to the F-tT for re-hearing. Mr Daly suggested a differently-constituted tribunal, a point on which Mr Edwards was neutral. In view a differently-constituted tribunal is appropriate, and I so direct.

Colin Bishopp

Upper Tribunal Judge

Release date: 26 September 2011