Neutral Citation Number: [2020] EWCA Civ 488

Case No: C1/2018/1737

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
MR JUSTICE LEWIS
[2018] EWHC 1688 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/04/2020

Before:

LORD JUSTICE IRWIN
LORD JUSTICE HENDERSON
and
MR JUSTICE MANN

- -

Between:

R **On the application of** **ZARATHUSTRA JAL AMROLIA**	**Appellant**
- and -	
THE COMMISSIONERS FOR HM REVENUE & CUSTOMS	**Respondents**
-and-	
R **On the application of** **ISIDORA RANJIT-SINGH**	**Appellant**
-and-	
THE COMMISSIONERS FOR HM REVENUE & CUSTOMS	**Respondents**

- -
- -

Mr Thomas Chacko (instructed by **Bird & Bird**) for the **Appellants**
Mr Timothy Brennan QC and Mr Christopher Stone (instructed by the **General Counsel and Solicitor to HMRC**) for the **Respondents**

Hearing date: 4 February 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30 a.m. on Friday 3 April 2020

Lord Justice Henderson:

Introduction and Background

1. The appellant taxpayers, Dr Zarathustra Amrolia and Dr Isidora Ranjit-Singh, were each members of a limited liability partnership ("the LLP") in which they invested with the purpose of generating trading losses in the tax year 2004/05 which they could set against their other taxable income for that or previous years. Their investment was geared so that, for every £1,000 contributed by the taxpayer, a further £3,000 was added by way of a limited recourse bank loan funded by circular movements of money and repayable (if at all) only from future profits (if any) of the LLP's initially loss-making trade. The arrangements formed part of a marketed tax avoidance scheme, for which each taxpayer presumably paid a substantial fee.

2. The LLP was called Tower MCashback 3 LLP. It was incorporated on 30 March 2004, and carried on a trade of software licensing. Dr Amrolia joined the LLP in September 2004, contributing £400,000, of which £300,000 (or 75%) was borrowed. Dr Ranjit-Singh had already joined the LLP in June 2004, contributing £232,000, of which £174,000 was borrowed.

3. As intended, the LLP purportedly made a substantial loss in the 2004/05 tax year. The shares of that loss allocated to the taxpayers amounted to just less than their total contributions: £399,953 in the case of Dr Amrolia, and £231,973 in the case of Dr Ranjit-Singh. In their personal tax returns for that year, they duly claimed to make use of the losses. Dr Amrolia claimed to carry back the whole of his loss and to set it against his general income from the previous year, pursuant to section 380(1)(b) of the Income and Corporation Taxes Act 1988 ("ICTA 1988"). Dr Ranjit-Singh claimed to set £99,984 of her loss "sideways" against her income for the current year, pursuant to section 380(1)(a) of ICTA 1988, and to carry back the remaining £131,989 to 2001/02 and 2002/03 pursuant to the further relief for individuals for losses in the early years of a trade contained in section 381 of ICTA 1988.

4. In September 2006, the respondent Commissioners for HM Revenue & Customs ("HMRC") gave notice to the LLP that they were opening an enquiry into its partnership return for 2004/05, which had been submitted pursuant to section 12AA of the Taxes Management Act 1970 ("TMA 1970"). The notice of enquiry was given under section 12AC(1) of TMA 1970. By virtue of section 12AC(6), the giving of notice of enquiry to the LLP was deemed to include the giving of notice of enquiry under section 9A(1) to each individual partner who had made a personal return under section 8 of the Act, including therefore Dr Amrolia and Dr Ranjit-Singh. I record at this point that, although an LLP is a corporate entity, it is relevantly treated for income tax purposes in the same way as an ordinary English partnership: see section 863 of the Income Tax (Trading and Other Income) Act 2005, and Revenue and Customs Commissioners v Vaines [2018] EWCA Civ 45, [2018] STC 297, at [14] to [18].

5. Before HMRC's enquiry into the LLP's 2004/05 return was concluded, effect was given by HMRC to the loss relief claims which the taxpayers had made in their personal returns for that year. On 27 February 2009, HMRC made a tax repayment to Dr Amrolia of £173,781.19, comprising credits to his self-assessment account of £159,981.20 in respect of tax and £13,799.99 repayment supplement. Dr Ranjit-Singh,

for her part, had already received credits to her self-assessment account of £28,757.57 in respect of her sideways claim, and £45,050.84 in respect of her carry back claims, on 3 October 2005 and 10 November 2005 respectively.

6. On 11 May 2011, the Supreme Court delivered judgment in relation to similar schemes carried on through two predecessor LLPs, Tower MCashback LLP 1 and Tower MCashback LLP 2: see Tower MCashback LLP 1 and Another v Revenue and Customs Commissioners [2011] UKSC 19, [2011] 2 AC 457. For present purposes, it is enough to say that the Supreme Court upheld only 25% of the first-year allowances claimed by the predecessor LLPs, because the borrowed money did not in any meaningful sense involve an incurring of expenditure in the acquisition of software rights: see, in particular, the judgment of Lord Walker of Gestingthorpe JSC at [75]. It was soon realised that this reasoning would be equally fatal to 75% of the first-year allowances claimed in the third iteration of the scheme, and on 28 June 2011 HMRC served a closure notice pursuant to section 28B(1) of TMA 1970 disallowing 75% of the losses claimed by the LLP for 2004/05. Although the LLP initially appealed against the closure notice, the appeal was withdrawn in January 2012 and a later application to reinstate it was rejected by the First-tier Tribunal ("the FTT") on 5 December 2014: Tower MCashback 3 LLP v HMRC [2014] UKFTT 1081 (TC).

7. We have not seen the closure notice which was served on the LLP, but it is important to note that its effect is now final and it cannot be challenged by the LLP itself, or by the individual partners whose shares of the LLP's first-year losses were correspondingly reduced by 75%. The issues which arise on this appeal stem from the steps which were then taken by HMRC to amend the taxpayers' individual returns so as to give effect to the unchallenged amendments made to the LLP's partnership return.

8. Section 28B of TMA 1970 relevantly provided as follows:

> "**Completion of enquiry into partnership return**
>
> (1) An enquiry under section 12AC(1) of this Act is completed when an officer of the Board by notice (a "closure notice") informs the taxpayer that he has completed his enquiries and states his conclusions. In this section "the taxpayer" means the person to whom notice of enquiry was given or his successor.
>
> (2) A closure notice must either –
>
> (a) state that in the officer's opinion no amendment of the return is required, or
>
> (b) make the amendments of the return required to give effect to his conclusions.
>
> (3) A closure notice takes effect when it is issued.
>
> (4) Where a partnership return is amended under subsection (2) above, the officer shall by notice to each of the partners amend–

> (a) the partner's return under section 8 or 8A of this Act, or
>
> (b)…
>
> so as to give effect to the amendments of the partnership return."

9. In fulfilment of the duty under section 28B(4), notice was given by an officer of HMRC to each of the taxpayers amending his or her personal return under section 8. Since the terms of the two notices are of central importance, I must set them out in full.

10. The notice to Dr Amrolia was dated 4 February 2016 and contained in a letter sent by Mr P Bolton, a member of the Individual Compliance Team at Charities, Savings & International 3 in Bootle. It reads as follows:

> "Dear Dr Amrolia
>
> **Tower MCashback 3 - Amendment to your personal Self Assessment Tax return – year ending 5 April 2005 (Section 28B(4) Taxes Management Act 1970)**
>
> On 27 September 2006 an enquiry was opened into the Tower MCashback 3 partnership's Self Assessment tax return for the period ended 5 April 2005.
>
> Those enquiries were completed on 28 June 2011 and the conclusion was that the claim to Capital Allowances was excessive. An appeal was made against the closure notice on 28 July 2011 but this was subsequently withdrawn in October 2015. As a consequence the appeal process has been exhausted and the amendments agreed.
>
> I have today amended your Self Assessment account for the year ended 5 April 2005 to take account of the reduction in losses allocated to you by the partnership. The share of the loss has been changed from £399,953.00 to £127,516.00. You originally claimed tax relief to be calculated by reference to earlier years and credits of £159,981.20 tax and £13,799.99 repayment supplement were applied to your Self Assessment account and a repayment of £173,781.19 was paid on 27 February 2009.
>
> The result of this amendment is that your tax refund has decreased by £108,974.80 to £51,006.40. This credit due on 31 January 2006 attracts a repayment supplement of £4,396.87 to 27 February 2009. I have therefore applied a credit of £55,403.27 to your Self Assessment account today.
>
> I enclose a statement of your Self Assessment account."

11. The notice given to Dr Ranjit-Singh was contained in a letter dated 15 March 2016 from Bob Newman, an Avoidance Caseworker at HM Revenue & Customs Counter-Avoidance in Newcastle. It reads as follows:

> "Dear Miss Ranjit-Singh
>
> **Tower MCashback 3 - Amendment to your personal Self Assessment Tax return – year ending 5 April 2005 (Section 28B(4) Taxes Management Act 1970)**
>
> On 27 September 2006 an enquiry was opened into the Tower MCashback 3 partnership's Self Assessment tax return for the period ended 5 April 2005. Those enquiries were completed on 28 June 2011 and the conclusion was that the claim to Capital Allowances was excessive. An appeal was made against the closure notice on 28 July 2011 but this was subsequently withdrawn in October 2015. As a consequence the appeal process has been exhausted and the amendments agreed.
>
> Your share of the partnership loss was previously stated as £231,973.00. £99,984.00 was set against that current year's income and £131,989.00 was set against previous years' income. A credit was applied to your Self Assessment account for £45,050.84 and repaid on 10 November 2005 in respect of the carry back claim.
>
> I have today amended your Self Assessment return for the year ended 5 April 2005 to take account of the reduction in losses allocated to you by the partnership. The amount of your share of the partnership loss is now £73,960.00 which I have carried back to set against previous years' income.
>
> I have amended the carried back loss claim to £24,834.08. The interest due on the over-repayment of £20,216.76 is £8,975.13 as at today's date. The revised credit is therefore £15,858.95.
>
> I enclose a revised tax calculation for the year ended 5 April 2005 to reflect the cancellation of that current year's loss claim. This has resulted in additional tax due of £35,300.78. The interest charges as a result of this amendment are £15,188.47 as at today's date.
>
> I enclose a copy of your Self Assessment statement of account as at today's date which shows a balance now due of £79,681.14. Please pay the amount due now as interest continues to accrue daily."

It will be noted that the officer proceeded on the assumption that, with the greatly reduced amount of relief now available to her, Dr Ranjit-Singh would not wish to use any of it against her current year's income but would prefer to carry it back to the maximum extent permitted. As it turned out, this assumption was incorrect and Dr

Ranjit-Singh instead elected to utilise the reduced relief sideways. Appropriate adjustments to the figures were then agreed in correspondence, subject to the issues which we have to determine.

12. There is no statutory right of appeal to the FTT against a notice served on a partner under section 28B(4) of TMA 1970, with the consequence that a legal challenge to such a notice must be brought by way of judicial review. The taxpayers wished to challenge the lawfulness of the notices which I have set out above, in so far as the notices purported to amend the liability of each taxpayer in 2004/05 and require repayment of tax which had already been repaid or credited to them pursuant to their original claims for trade loss relief. Letters before claim were therefore sent to HMRC by the solicitors then acting for the taxpayers, Reed Smith LLP, followed by the institution of judicial review proceedings, by Dr Amrolia on 3 May 2016 and by Dr Ranjit-Singh on 15 June 2016. The taxpayers have throughout been represented by the same counsel, Mr Thomas Chacko.

13. The initial focus of the claims was described in the statement of facts which accompanied each claim form as being "protective", in the sense that the overriding concern of each taxpayer was to prevent HMRC from bringing enforcement or collection proceedings against them on the strength of the amendments to their returns contained in the section 28B(4) notices. The basic contention, set out in the detailed statement of grounds settled for each taxpayer by Mr Chacko, was that HMRC had no legal power to recover the wrongly repaid or credited tax save through exercise of the powers of assessment conferred on them by sections 29 and 30 of TMA 1970, and HMRC were now out of time to avail themselves of the powers conferred by either section. In other words, it was now too late for HMRC to recover the tax which they had wrongly repaid or credited to the taxpayers in response to the original claims for loss relief which they had made in their 2004/05 tax returns.

14. Section 29 of TMA 1970 enables so-called "discovery" assessments to be made by HMRC, within fairly strict time limits, following a discovery that (among other matters) "any relief which has been given is or has become excessive". Section 30(1) of TMA 1970 provides that:

> "Where an amount of income tax… has been repaid to any person which ought not to have been repaid to him, that amount of tax may be assessed and recovered as if it were unpaid tax."

By virtue of subsections (1A) and (1B), this power is not available where the amount of tax which has been repaid is assessable under section 29; and where the power is available, the same time limits and restrictions apply as those provided for in section 29.

15. In the absence of an assessment under either section, Mr Chacko's argument in each statement of grounds was that HMRC had no power to compel reimbursement of the excessive loss relief received by the claimant. That could only be done by making a lawful amendment of the self-assessment which a taxpayer is obliged to include in his or her return by section 9(1) of TMA 1970. So far as material, section 9(1) provides that:

> "… every return under section 8… of this Act shall include a self-assessment, that is to say –
>
> (a) an assessment of the amounts in which, on the basis of the information contained in the return and taking into account any relief or allowance a claim for which is included in the return, the person making the return is chargeable to income tax… for the year of assessment; and
>
> (b) an assessment of the amount payable by him by way of income tax, that is to say, the difference between the amount in which he is assessed to income tax under paragraph (a) above and the aggregate amount of any income tax deducted at source and any tax credits [*of specified descriptions, none of which is relevant*]."

16. Mr Chacko's argument was that the section 28B(4) notices served on each taxpayer by HMRC amended their returns, but not their self-assessments as defined in section 9(1) of TMA 1970. As was contended, in each statement of grounds:

> "All that HMRC appear to have done, to support their claim to repayment, is make changes to a document called the "Self-Assessment Account" or "Self-Assessment Statement" which records sums owed to HMRC or to the Claimant, so that it now states that the Claimant owes an additional sum to HMRC. This document has no statutory force and cannot create a debt to HMRC."

In those circumstances, it was said to be "an abuse of HMRC's power to threaten collection proceedings or other similar action when the underlying debt is not in fact owed to them."

17. Dr Amrolia was granted permission to apply for judicial review, by May J, on 17 August 2016. On 14 September 2016, however, Dr Ranjit-Singh was refused permission, on the papers, by Nathalie Lieven QC sitting as a Deputy High Court Judge. Dr Amrolia's claim was then stayed pending the decision of the Supreme Court in R (de Silva) v Revenue and Customs Commissioners [2017] UKSC 74, [2017] 1 WLR 4384 ("de Silva").

18. The Supreme Court gave judgment in de Silva on 15 November 2017. The leading judgment was delivered by Lord Hodge JSC, with whom the other members of the court agreed. The judgment made it clear, as the taxpayers in the present case eventually accepted, that HMRC were not confined to the powers of assessment in sections 29 and 30 of TMA 1970 when seeking to recover excessive loss relief which had been given on a carry-back claim. Provided that an enquiry was opened in time into the return for the year of assessment in which the relevant trading losses were incurred (described in the judgment as Year 2, and in our case 2004/05), effect could be given to the claim in Year 2 by virtue of the words "or otherwise" in paragraph 2(6) of schedule 1B to TMA 1970.

19. As Lord Hodge explained at [17], schedule 1B has effect "as respects certain claims for relief involving two or more years of assessment." A claim to carry back trading losses pursuant to sections 380 or 381 of ICTA 1988 is such a claim. So far as relevant, paragraph 2 of Schedule 1B provides that:

> "(1) This paragraph applies where a person makes a claim requiring relief for a loss incurred or treated as incurred… in one year of assessment ("the later year") to be given in an earlier year of assessment ("the earlier year").
>
> (2) Section 42(2) of this Act shall not apply in relation to the claim.
>
> (3) The claim shall relate to the later year.
>
> (4) … the claim shall be for an amount equal to the difference between –
>
> (a) the amount in which the person is chargeable to tax for the earlier year ("amount A"); and
>
> (b) the amount in which he would be so chargeable on the assumption that effect could be, and were, given to the claim in relation to that year ("amount B").
>
> …
>
> (6) Effect shall be given to the claim in relation to the later year, whether by repayment or set-off, or by an increase in the aggregate amount given by section 59B(1)(b) of this Act *or otherwise.*"

(emphasis supplied).

20. The way in which paragraph 2 works was explained by Lord Hodge at [19]:

> "Paragraph 2 of Schedule 1B thus is concerned with relief sought for a loss incurred in the later year (which I will call "Year 2") by carrying it back to the earlier year ("Year 1"). Significantly, paragraph 2(3) makes it clear that the claim relates to Year 2. The quantification of the claim is governed by paragraph 2(4): the claim is the difference between amount A and amount B on the counterfactual assumption that effect could have been and was given to the claim in Year 1. That assumption is counterfactual because paragraph 2(3) and paragraph 2(6) relate the claim and the giving effect to the claim to Year 2."

21. Lord Hodge went on to explain why a taxpayer is obliged to include information about the relevant losses in his Year 2 return, and to make his claim for carry back relief in that return, even if a prospective claim for the relief had already been made in

Year 1 (which is not a complication which arises in the present case): see [26] to [29]. In particular, as Lord Hodge said, at [28]:

> "If HMRC had already given effect to part of the claim under Schedule 1A in Year 1 by giving relief, for example by repayment, the return for Year 2 would still have to state the loss, the claim and the relief already given in order to establish the amounts in which the taxpayer is chargeable to income tax in Year 2. Similarly, if the taxpayer had already received full relief under Schedule 1A in Year 1, he would have to state the same information as to the loss, the claim and the relief already given. By so doing he enables the return to "take into account", as section 8(1AA)(a) requires, both the relief which is claimed in the return and that which he has already received. In each case that information is a necessary part of his return for Year 2 as it is information required "for the purpose of establishing the amounts" in which the taxpayer is chargeable to income tax for that year of assessment: section 8(1)."

Although Lord Hodge stated these principles by reference to a case where the relief had already been claimed prospectively, and given effect, in Year 1, the same reasoning must clearly apply *a fortiori* when the carry back claim is made for the first time in the Year 2 return.

22. In paragraph [31], Lord Hodge considered (among other matters) whether it was open to HMRC to recover any tax relief which was subsequently found not to have been due, following an enquiry into the Year 2 return. The second and third reasons given by Lord Hodge for answering this question in the affirmative are relevant:

> "Secondly, the mechanisms in paragraph 2(6) of Schedule 1B for giving effect to a claim in Year 2 are not confined to repayment, set off and the increase in the aggregate of payments on account, none of which would alter the tax chargeable for Year 2. Paragraph 2(6) includes the words "or otherwise", which open the door to an adjustment of the amount chargeable to income tax by virtue of both section 8(1AA)(a), which provides that the amounts in which a person is chargeable "take into account any relief ...a claim for which is included in the return" and section 9(1)(a) which makes similar provision for the self-assessment. Where relief has already been given in error, it would in my view be open to HMRC, in completing an enquiry, to amend the return (for example, under section 28A(2) TMA) (as inserted by section 188 of the Finance Act 1994) by altering the amount chargeable to income tax for Year 2 in order to recover the sums which were wrongly paid as relief. Thirdly, section 59B(5) provides for payment of income tax which is payable as a result of an amendment of a self-assessment under section 28A on completion of an enquiry into a personal tax return."

23. Again, the principles stated by Lord Hodge in relation to completion of an enquiry into a personal return under section 9A, leading to an amendment of the return under section 28A, must in my view apply in a similar way to the completion of an enquiry into a partnership tax return under section 12AC, leading to an amendment of the partnership return by a closure notice under section 28B(1) and the giving of consequential notices amending the returns of the individual partners under section 28B(4).

24. Dr Amrolia's claim for judicial review, and Dr Ranjit-Singh's renewed application for permission to apply for judicial review, came on for hearing before Lewis J on 21 June 2018. In a supplemental skeleton argument prepared for that hearing, dated 15 June 2018, Mr Chacko accepted that, in the light of de Silva, HMRC did have power to amend the taxpayers' self-assessments within their tax returns, but maintained the argument that HMRC had not succeeded in doing this in the section 28B(4) notices given to the taxpayers in 2016. He also submitted that de Silva had no impact on Dr Ranjit-Singh's sideways claim, with the consequence that HMRC had no power to amend her self-assessment to show an obligation to repay the relief she had received for 2004/05.

25. Having heard full argument on 21 June 2018, the judge handed down his reserved judgment on 4 July 2018: see [2018] EWHC 1688 (Admin). As he recorded at [27], the taxpayers had each sought to amend their grounds of claim to argue the points raised in Mr Chacko's supplemental skeleton argument. The judge gave permission for the amendments, and also gave Dr Ranjit-Singh permission to apply for judicial review on the amended grounds. It was common ground that there should be a full hearing of her claim, as if it were the substantive hearing. The judge accordingly identified the issues before him, at [28], as:

> (a) whether the notices of 4 February and 15 March 2016 were valid for the purposes of amending the returns and enabling HMRC to recover the tax previously repaid, or whether HMRC also had to amend the amount of the tax chargeable for 2004/05 in the self-assessment included in each of the returns; and
>
> (b) whether HMRC had power to amend Dr Ranjit-Singh's return for 2004/05 in a way that enabled the recovery of the tax relief she had received for that year and the tax repaid to her for earlier years.

The judgment of Lewis J

26. After setting out the factual background, the statutory framework (including a full discussion of de Silva) and the procedural history, the judge dealt with the first issue at [29] to [35]. He began by recording Mr Chacko's submission that HMRC had never validly amended each taxpayer's self-assessment for 2004/05, and Mr Chacko's reliance upon the decision of this court in R (Archer) v Revenue and Customs Commissioners [2017] EWCA Civ 1962, [2018] 1 WLR 5210, ("Archer") as authority for the proposition that HMRC must notify the precise amount of the tax chargeable, and it is not enough for them simply to provide figures from which the taxpayer could himself or herself calculate the correct amount. If that were not done, said Mr Chacko, the amendment to the return would be ineffective to alter the amount of tax chargeable: see Archer at [30].

27. The judge then recorded the submission of Mr Brennan QC, appearing then as he did before us with Mr Christopher Stone for HMRC, that it was sufficient if the notice under section 28B(4) of TMA 1970 amended the self-assessment included within the tax return by showing the amended, and different, amount of allowable loss that could be claimed by way of relief. Where that involved the recovery of tax previously repaid by HMRC to the taxpayer, the most HMRC had to do was to notify the amount by which an earlier provisional repayment was excessive. The notices in the present case, he submitted, did precisely that.

28. In the discussion which followed, the judge did not refer again to Archer, but reasoned as follows. First, section 59B(5) of TMA 1970 expressly recognises that there is an obligation to pay (or repay) tax arising in consequence of an amendment or correction of a self-assessment included within a tax return. Secondly, the purpose of that subsection is to facilitate the working out of tax due where self-assessments included in returns are amended or corrected: see [31]. Thirdly, where a claim for losses is reduced, the return can be amended or corrected accordingly. The figures included in the loss claim form part of the self-assessment included within the return, as shown by de Silva at [26] to [29] and Knibbs v Revenue and Customs Commissioners [2018] EWHC 136 (Ch), [2018] STC 650, at [82], where Warren J accepted HMRC's submission that the self-assessment "is not just the figure stating the amount due but is every element of the calculation that goes to the tax chargeable in the year".

29. The judge continued, in paragraph [32]:

> "Where [*HMRC*] have already given effect to the losses claimed by making a repayment of tax, section 59B(5) TMA provides that on amendment of the self assessment that amount is repayable by the taxpayer. The situation falls precisely within the words, and meets the purpose, of the sub-section. There has been an amendment or correction of the self-assessment in the return – the amount of the allowable losses that may be set against income has been amended. As a result, an amount of tax is repayable – because tax had been repaid on the basis that the amount of the loss could be set against income in earlier years and tax liability reduced, and now that the amount of the losses have been amended or corrected, the amount of the tax that should have been repaid is less. The taxpayer is obliged to repay that amount by reason of section 59B(5) TMA."

30. The judge then explained how, in his view, these principles were reflected in the notices sent to the taxpayers, consistently with section 59B(5) and de Silva. The judge accordingly decided the first issue in HMRC's favour.

31. The judge dealt much more briefly with the second issue. He rejected Mr Chacko's submission that the power recognised in de Silva applied only to adjustments relating to losses which had been carried back, and did not enable an adjustment to be made where losses were set against income in the current year of assessment. The judge saw no reason why the same machinery should not be employed to amend the amount of allowable losses and recalculate the amount of the tax due for the year of assessment in which the claim was made: see [37].

32. Under the heading "Ancillary Matters", the judge then said, at [38], that it was unnecessary for him to consider two further arguments advanced by Mr Brennan, the first of which was that, if there had been some flaw in the notices given to the taxpayers, the matter could have been corrected under section 114 of TMA 1970. Section 114(1) provides that:

> "An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding."

33. The claims for judicial review were therefore dismissed. The taxpayers now appeal to this court, with permission granted by David Richards LJ.

Grounds of appeal

34. There are three grounds of appeal which the taxpayers have permission to argue:

(1) the judge erred in treating changes to the information in a tax return (here, information about the reduction of a loss claim) as amounting to changes to the figure in the self-assessment for the year in which that loss arose, contrary to the decision of this court in Archer;

(2) the judge erred in interpreting the section 28B(4) notices sent to the appellants as giving rise to an obligation to pay the sums sought by HMRC, despite the failure of the notices to include those sums as part of the amended self-assessments for 2004/05; and

(3) the judge also erred in accepting that HMRC had power to amend the self-assessment of Dr Ranjit-Singh for 2004/05 so as to include a sum representing the rebate paid to her in respect of her sideways loss relief claim for that year.

35. By a respondent's notice, HMRC maintain their argument based on section 114 of TMA 1970 in the event that the notices are held to be defective by reason of any want of form or omission therein.

Archer

36. In view of the significance attached by Mr Chacko to the decision of this court in Archer, it is convenient to begin by considering it.

37. The facts are helpfully summarised in the headnote at [2018] 1 WLR 5210:

> "The taxpayer submitted self-assessment tax returns for two tax years claiming losses and relief in relation to two tax avoidance schemes. Having enquired into those returns pursuant to section

> 9A of [*TMA 1970*], as inserted, the revenue issued a closure notice in respect of each tax year, pursuant to section 28A of the 1970 Act, as substituted. Each notice stated that the scheme relied on for that year was not effective and that the revenue was amending the return to reflect that fact, but failed to state the amount of tax which was due. Subsequently the revenue amended the online version of the taxpayer's returns, which were visible on the revenue's website. When the taxpayer's advisers challenged the closure notices, the revenue responded with a letter setting out a statement of account of the taxpayer's alleged indebtedness pursuant to section 59B(5) of the Act, as inserted, and threatening bankruptcy if payment were not received within seven days. The taxpayer sought judicial review of the decisions contained in that letter, contending that since the closure notices did not set out the amount of tax which the revenue claimed was due they had failed to amend the taxpayer's returns, as required by section 28A(2)(b), with the consequence that the taxpayer owed no debt to the revenue pursuant to section 59B(5)."

38. The case therefore concerned a closure notice issued to an individual taxpayer, Mr Archer, on completion of an enquiry under section 9A of TMA 1970 into his tax returns for the two relevant years. The terms of the closure notices are set out in the judgment of Lewison LJ (with whom Longmore and Asplin LJJ agreed) at [14]. Each letter stated that it was a closure notice issued under section 28A(1) and (2) of TMA 1970. Each explained why HMRC had concluded that the relevant loss claim failed, and dealt with certain other issues. The writer then said "I am amending your return to reflect all of the above", but did not state the amount of tax said to be due from Mr Archer.

39. The requirement in section 28A(2)(b) is that a closure notice must "make the amendments of the return required to give effect to [*the officer's*] conclusions". It was submitted for Mr Archer that this requirement was not satisfied "unless the closure notice itself informs the taxpayer of the amount of tax that he is required to pay": see [18]. In support of this submission, counsel for Mr Archer referred to the decision of Browne-Wilkinson J in Hallamshire Industrial Finance Trust Limited v Inland Revenue Commissioners [1979] 1 WLR 620, where he held that an assessment made by the Inland Revenue had to state the amount of tax payable. Lewison LJ quoted, at [18], the following passage from Browne-Wilkinson J's judgment, at 625:

> "The majority of taxpayers on receiving an assessment look only at the amount of tax payable, having neither the time nor the ability — without professional advice — to discover whether that sum is correct. Yet the Crown argues that it would fully have discharged its functions of assessing and giving notice of assessment without specifying any amount of tax payable, merely by stating the facts which would enable someone skilled in tax matters to compute the tax which the Crown is going to demand… such demand probably not being made until after time for appealing against the assessment has

> expired. In my judgment the words of the statute would have to be very clear to force the court to this conclusion."

Browne-Wilkinson J concluded that the words of the statute did not compel that result, saying at 627:

> "A man should be told what tax he has to pay, not merely given the information from which a skilled adviser would be able to decide the tax eventually to be demanded."

40. Lewison LJ then referred to the submissions of HMRC, including (a) the fact that the Hallamshire case was decided at a time when all assessments were made by the Inland Revenue, and (b) the absence of any express requirement in section 28A(2)(b) that the tax payable in consequence of the enquiry be stated in the closure notice itself. This was said to contrast with the position in earlier iterations of section 28A, before it was amended in 2001, which stated that an enquiry was completed when HMRC notified their "conclusions as to the *amount of tax* which should be contained in the taxpayer's self-assessment": see [20].

41. Accepting the submissions of Mr Goldberg QC for Mr Archer, Lewison LJ continued as follows, at [22]:

> "In agreement with the judge, I consider that Mr Goldberg is right on this issue. The self-assessment that the taxpayer is required to file as part of his return must state the amount of tax for which the taxpayer is liable. One would naturally expect that an amendment to that assessment must likewise state the amended amount of tax for which he is liable. The formal requirements for the validity of a closure notice must be the same irrespective of the sophistication of the particular taxpayer and the skill of his professional advisers, if indeed he has any. Section 28A(2)(b) requires the amendment of the return to be made by the closure notice itself; not merely by an officer of HMRC. So, unless incorporated by reference, Mrs Cook's amendment of the online return cannot itself satisfy the words of the subsection."

42. Lewison LJ then said that he thought his conclusion coincided with the view of the FTT in Wau Lam (trading as Sunlight Takeaway Meals) v Revenue and Customs Commissioners [2016] UKFTT 659 (TC), which (like the present case) concerned a closure notice relating to a partnership return, to which section 28B rather than section 28A of TMA 1970 applied. Lewison LJ quoted substantial extracts from the decision of the FTT in that case, at [22] to [24] of his judgment. The decision of the FTT (Judge Sarah Falk and Julian Sims) was written by Judge Falk, now Falk J.

43. The relevant passages are worth repeating, not only because of their authorship, but because they relate to a partnership closure notice under section 28B and have been approved by this court:

> "25. The provisions which in our view govern the issue and effectiveness of a closure notice are subsections (1) to (3) of

> section 28B. Section 28B(1) sets out how an enquiry is completed. It describes a "closure notice" as a notice from an officer of HMRC that "informs the taxpayer that he has completed his enquiries and states his conclusions". It is apparent that a document that does not do these things will not be a closure notice, since it will not meet the definition. Section 28B(2) contains an additional mandatory requirement for the content of a closure notice: it must either state that no amendment of the return is required or it must "make the amendments of the return required to give effect to his conclusions"…
>
> 26. In our view it is clear that a closure notice that meets the requirements of both subsections (1) and (2) is a "closure notice" that takes effect when it is issued in accordance with subsection (3). Section 28B(3) is clear and unqualified, and the only provisions that govern what a closure notice is and what its contents should be are those in subsections (1) and (2). There is nothing in section 28B that provides any indication that the effectiveness of a closure notice is subject to compliance with section 28B(4). On the contrary, in our view there is a very strong indication that there must be a valid closure notice in order for amendments to individual returns to be made under subsection (4). Section 28B(4) can only apply on its terms when a partnership return "is amended" under subsection (2). This can only occur via the issue of the closure notice, since it is a closure notice itself that makes the amendments of the return under that section…
>
> …
>
> 29…. Under section 28B(2) it is the notice that makes the amendments of the return, not anything else that HMRC might do by way of entries on its internal systems. If the notice meets the requirements of subsections (1) and (2) then nothing more is required in order for it to be valid."

44. Lewison LJ then rejected HMRC's other arguments, at [26] to [29], before concluding at [31]:

> "In my judgment in principle the *Hallamshire* case [1979] 1 WLR 620 still holds good where it is HMRC who calculate the tax due, despite the change to self-assessment. I consider, therefore, that the closure notices did not comply with section 28A(2). Unless section 114 can be successfully invoked to supply the omission to amend the self-assessment, no debt payable under section 59B(5) has been created."

45. After considering the scope of application of section 114 and the relevant authorities at paragraphs [32] and following, Lewison LJ held that the section did operate to validate the closure notices as amendments of Mr Archer's returns and self-

assessments: see [41]. On the particular facts of the case, HMRC's omission to amend the returns to accord with their conclusions was a "matter of form rather than substance", and Mr Archer "can have been in no doubt what he owed HMRC": see [39].

Grounds 1 and 2: did the section 28B(4) notices served on the taxpayers validly amend the amounts of their self-assessments?

46. In considering the first two grounds of appeal, which it is convenient to take together, the critical issue, as it seems to me, is whether the reasoning of this court in Archer applies to the notices served on the taxpayers under section 28B(4) of TMA 1970. Archer is authority for the proposition that a closure notice issued on completion of an enquiry into a personal tax return under section 28A must amend the taxpayer's self-assessment (which forms part of the return by virtue of section 9(1)) so as to state the precise amount of tax which is said to be payable. Only thus can the closure notice "make the amendments of the return" required to give effect to the officer's conclusions within the meaning of section 28A(2)(b). The only alternative available to the officer is to state that in his opinion no amendment of the return is required: see section 28A(2)(a).

47. At first sight, there is obvious force in the contention that similar principles must apply following the completion of an enquiry into a partnership return, when a closure notice is issued under section 28B(1) and (2), and consequential notices are then given to the individual partners under subsection (4). After all, this is the document which notifies the partner of the amendments to his or her return needed to give effect to the amendments of the partnership return, and if this leads to an amendment of the partner's self-assessment, it may be thought that the Hallamshire principle should require the consequential figure of tax alleged to be due from the partner to be explicitly stated, in the same way as upon completion of an enquiry into the partner's personal tax return. Furthermore, the parallel may seem to be reinforced by the fact that the enquiry into the partnership return gives rise to a deemed enquiry into the personal return of each partner, by virtue of section 12AC(6)(a). How, it may be asked, is that deemed enquiry to be brought to an end otherwise than by a notice equivalent to a closure notice under section 28A?

48. Despite the attractions of such an analysis, and with some hesitation, I do not think it is correct. The first, and obvious, point is that a notice under section 28B(4) is not itself a closure notice. On the contrary, the statutory purpose of the notice is merely to amend each partner's section 8 return "so as to give effect to the amendments of the partnership return". This language strongly suggests that the purpose of the notice is consequential, and dependent on the making of valid amendments of the partnership return by a closure notice issued in accordance with section 28B(1) to (3). As the FTT said, rightly in my view, in the Wau Lam case at [26], quoted by Lewison LJ in Archer at [23], section 28B(4) can only apply when a partnership return is "amended" under subsection (2), and "[t]his can only occur via the issue of the closure notice, since it is the closure notice itself that makes the amendments of the return under that subsection."

49. The next important point is that there is no dispute about the validity of the closure notice that was issued to the LLP. As I have said, it was not even included in the bundle of documents for this appeal, or (I assume) for the judicial review proceedings.

It must therefore be assumed that the amendments made by that closure notice were valid and complied with section 28B(2)(b) by making the amendments of the partnership return required to give effect to the officer's conclusions. Furthermore, since every partnership return must include a "partnership statement" of the amounts specified in section 12AB, which include the amount of each partner's share of the partnership's trading loss for the relevant period, it follows that the precise amount of the revised loss allocated to each partner's share must have been validly stated by way of amendment in the closure notice itself.

50. What, then, was the purpose of the notice given to each taxpayer under section 28B(4)? The notice itself had to amend each taxpayer's personal return so as to give effect to the (valid) amendments of the LLP's partnership return. This objective was achieved, in my judgment, by stating in the notice the reduced amount of each taxpayer's share of the partnership's loss. There is no dispute that each notice did this. For example, the notice to Dr Amrolia informed him that the losses allocated to him by the partnership had been reduced from £399,953 to £127,516. As a bare minimum, this is in my view all the notice had to do in order to comply with section 28B(4).

51. The limited, consequential nature of the subsection is reinforced, to my mind, by the fact that Parliament has not provided any statutory right of appeal from such a notice. By contrast, section 31(1)(b) of TMA 1970 confers a right of appeal against "any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return)". The absence of a right of appeal to the FTT would in my view be surprising if a notice under section 28B(4) had been intended to have substantially the same effect as a closure notice.

52. In his oral submissions, Mr Brennan QC also drew attention to the practical complexities which would arise in many cases if it were a statutory requirement for a section 28B(4) notice to include a statement of the precise amount of tax said to be due from the taxpayer for the relevant year of assessment. He illustrated this point by reference to the personal circumstances of Dr Amrolia, whose tax return for 2004/05 shows that he had invested in four different partnerships during the year (three of which related to the acquisition, production or distribution of films), and claimed to have made total losses of approximately £2.8 million from his participation in them. In addition, Dr Amrolia appears to have been non-UK domiciled, which would have added an extra layer of complication to his taxation affairs. I can see no good reason why section 28B(4) should be construed in such a way as to require all these complications to be taken into account, and Dr Amrolia's self-assessment to be amended to show a single overall figure of tax payable, when the only express requirement of the subsection is that his return should be amended so as to give effect to the amendments of the LLP's partnership return.

53. Dr Ranjit-Singh's taxation affairs were considerably simpler, but they do illustrate a further point. As I have already said, the notice given to her assumed that she would wish to carry back the reduced loss relief available to her, and that she would no longer wish to claim sideways relief. This may have been a reasonable working assumption for the officer to make, but it turned out to be wrong. Many similar examples could be given, where some further input from the partner is needed before the amount of tax due can be finalised. This in turn strongly suggests that the validity of a notice given to a partner under section 28B(4) cannot depend on prior resolution

of all the consequential issues that might arise before the taxpayer's final liability to tax for the relevant year can be ascertained.

54. For these reasons, I consider that a clear distinction needs to be drawn between the requirements for a valid closure notice, as expounded by this court in Archer, on the one hand, and the much more limited and consequential function of a notice given to an individual partner under section 28B(4), following completion of an enquiry into the partnership return, on the other hand. The taxpayers have never disputed that the notices accurately reflected the closure notice issued to the LLP, or that their personal tax returns were validly amended by the notices in those respects.

55. It does not follow from this conclusion, however, that the notice could not also deal with purely consequential computational matters and make appropriate adjustments to each taxpayer's self-assessment, resulting where appropriate in an enforceable demand for payment. This may be deduced from section 59B(5) of TMA 1970, which provides that:

> "An amount of tax which is payable or repayable as a result of the amendment or correction of a self-assessment under –
>
> (a) section 9ZA, 9ZB, 9ZC or 28A of this Act (amendment or correction of return under section 8 or 8A of this Act), or
>
> (b) section… 28B(4)(a)… of this Act (amendment of partner's return to give effect to amendment or correction of partnership return),
>
> is payable (or repayable) on or before the day specified by the relevant provision of Schedule 3ZA to this Act."

By virtue of paragraph 8(2) of Schedule 3ZA:

> "The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 28B(4)(a) of this Act was given."

56. Those provisions therefore provide machinery for the collection or repayment of tax as a result of the amendment or correction of a self-assessment under section 28B(4)(a). Mr Chacko understandably relies on section 59B(5) as an indication that a notice under section 28B(4)(a) must amend the self-assessment which forms part of the partner's return under section 8 if it is to ground a valid obligation to pay an amount of tax to HMRC. I agree with him that the notice must amend the taxpayer's self-assessment if it is to have that result, and that is indeed what each of the notices in this case purported to do. Each notice was headed "Amendment to your personal Self Assessment Tax return – year ending 5 April 2005". Furthermore, although the notices could in some respects have been more clearly set out and explained, there is no real difficulty in understanding the amendments to the self-assessment that the relevant officer intended to make. Neither taxpayer has suggested that they or their advisers had any problem in understanding the amendments made.

57. Where I differ from Mr Chacko is in the next crucial step in his argument, where he submits that a notice under section 28B(4) must therefore be treated in the same way as a closure notice, with the result that the reasoning of this court in Archer applies and the notice is invalid if it fails to state on its face the amount of tax payable. For the reasons I have given, I consider this further step in the argument to be mistaken. The amendments which have to be made to the partner's return are confined to those needed to give effect to the amendments of the partnership return. If the officer giving the notice chooses to go further, and amend the partner's self-assessment, there is nothing to prevent the officer from taking that course, and collection proceedings then may be based on the relevant amendments pursuant to 59B(5). But that does not turn the notice into the equivalent of a closure notice, or import a requirement for the notice itself to state the amount of tax payable as a condition of its validity.

58. I am encouraged in taking this view by the fact that the legislation nowhere expressly states that a notice under section 28B(4) is to operate as a closure notice of the deemed enquiry into the partner's personal tax return opened under section 12AC(6)(a) when notice was given of the enquiry into the LLP's partnership return under section 12AC(1). Nor can I see any proper basis for reading in a necessary implication to that effect. On the contrary, it seems to me that the deemed enquiry into each partner's individual return will remain open, if need be, following the giving of a notice under section 28B(4). If that is the position, the enquiry will then be terminated in due course by a closure notice under section 28A to which the requirements identified by this court in Archer will apply in the usual way.

59. I have said that the enquiry into the individual partner's return will remain open "if need be", because in many cases the officer giving the mandatory notice under section 28B(4) will make purely consequential amendments to the partner's self-assessment which are sufficient to deal with all remaining points in issue and leave no scope for any possible further enquiry. In cases of that nature, the notice under section 28B(4) will have the same practical effect as a closure notice relating to the deemed enquiry into the partner's personal return. But precisely because of the consequential nature of the notice, in a context where a valid closure notice has already been given terminating the enquiry into the partnership's return, I do not think there is any formal requirement for the resulting figure of tax due from the partner to be stated in accordance with the Hallamshire principle. It is enough if the notice, on a fair reading, makes clear to the partner what the relevant amendments are to his self-assessment and how his liability to tax for the relevant year is affected. The notice given in the present case to Dr Amrolia provides an example of these principles in operation. The section 28B(4) notice given to him was in my opinion effective to amend his self-assessment in accordance with its terms, by reducing the amount of his carried back loss claim and making the appropriate consequential adjustments to his (non-statutory) statement of account with HMRC.

60. The notice given to Dr Ranjit-Singh was also valid, in my judgment, to the extent that it fulfilled the minimum requirement of informing her of the reduced amount of her share of the LLP's allowable trade loss for 2004/05. However, the purported amendment of her self-assessment (on the mistaken assumption that she would now wish to carry back the whole of the reduced loss), and the requirement to pay additional amounts of tax and interest calculated on that basis, were in my view invalid, because they went beyond amendments to her self-assessment which were

purely consequential on the reduction in her share of the LLP's allowable loss. Until Dr Ranjit-Singh had been given an opportunity to reconsider the various options open to her under sections 380 and 381 of ICTA 1988, it seems to me that no final amendment to her self-assessment could properly be made, and the deemed enquiry into her personal tax return under section 12AC(6)(a) must have remained open.

61. I therefore conclude that Dr Ranjit-Singh was in principle entitled to challenge the notice by way of judicial review, in so far as it purported to finalise her income tax liability for 2004/05 in relation to her share of the LLP's trade loss, and required immediate payment of the amounts of tax and interest said to be due. The reason why the notice was ineffective, as I have sought to explain, was not that it infringed the Hallamshire principle, but rather that the amendments made by the officer on 16 March 2016 went beyond the limited scope of section 28B(4) and therefore could not found a valid demand for tax under section 59B(5).

62. Although my analysis of the position differs in significant respects from that advanced by Mr Chacko, and although I would dismiss both grounds of appeal in relation to Dr Amrolia, and would also dismiss the first ground in relation to Dr Ranjit-Singh, I think that she is in substance entitled to succeed on the second ground, because the notice sent to her did not in law give rise to an immediate obligation to pay the sums sought by HMRC.

Ground 3: did HMRC have power to amend the self-assessment of Dr Ranjit-Singh for 2004/05 so as to include a sum representing the tax repaid to her in respect of her sideways loss relief claim for that year?

63. In view of my conclusion on ground 2, this ground of appeal becomes academic. I will therefore deal with it briefly.

64. Mr Chacko's main argument, as I understood his submissions, is that it was not open to HMRC, having made a repayment of tax to Dr Ranjit-Singh in respect of her original sideways claim, later to seek to recover all or part of that tax in reliance on the principles stated by Lord Hodge in de Silva. Mr Chacko points out, correctly, that a sideways claim for loss relief does not engage the provisions of schedule 1B to TMA 1970, because the claim does not involve two or more years of assessment: see de Silva at [27]. As Lord Hodge there said, in relation to an exclusively sideways claim:

> "Schedule 1B would not apply as the claim for relief would involve only one year of assessment."

65. It remains the position, however, that a taxpayer who makes an exclusively sideways claim has to give details of the loss, and make the claim, in the year in which the loss is incurred. The same is also true, as Lord Hodge went on to explain at [28], if the taxpayer (like Dr Ranjit-Singh) wished to carry back part of the losses incurred in Year 2 to set off against his or her income of Year 1. In either case, HMRC may give effect to the claim in full, and it may later transpire, after the opening of an enquiry into the Year 2 return, that the relief given was excessive. In that situation, if the claim was an exclusively sideways claim, all that is necessary is for the closure notice given on termination of the enquiry to make the necessary adjustments to the tax chargeable for the year. If (as in the present case) the original claim was for a

combination of sideways and carry-back relief, then in giving effect to the claim in Year 2 HMRC can rely on the words "or otherwise" in paragraph 2(6) of Schedule 1B in order to recoup any relief previously given in error. This is the remedy which Lord Hodge held to be available to HMRC in the second reason which he gave in de Silva at [31].

66. The fallacy in Mr Chacko's argument, as it seems to me, is that the availability of this remedy where there has been a partial carry-back claim somehow impinges on the ability of HMRC to make appropriate adjustments to the Year 2 return to deal with any adjustments that may also be required to it on account of the sideways element of the claim. The only requirement for HMRC to be able to make amendments reflecting the sideways claim is that there should be an open enquiry into the taxpayer's Year 2 return. In Dr Ranjit-Singh's case, that condition is unquestionably satisfied, because of the deemed notice of enquiry into her return under section 12AC(6)(a). The deemed enquiry was given "under section 9A(1)", and therefore extended to "anything contained in the return, or required to be contained in the return, including any claim or election included in the return": see section 9A(4)(a). Accordingly, it was open to HMRC, in the context of the deemed enquiry into Dr Ranjit-Singh's return, to enquire into her claim for sideways relief.

67. For these short reasons, I would dismiss the third ground of appeal.

Section 114 of TMA 1970

68. I come finally to the issue raised by HMRC's respondent's notice. I can again deal with it briefly, because in relation to Dr Amrolia it would arise only if I had accepted the argument that the notice given to him had not validly amended his self-assessment. In those circumstances, his application for judicial review would have succeeded unless, as in Archer, HMRC were able to establish that the defects in the notice could be cured by section 114. So far as Dr Ranjit-Singh is concerned, I do not think there could be any question, if I have analysed her case correctly, of section 114 saving the day for HMRC. The defects in the notice given to her could not be described as a want of form or omission, because HMRC did not yet have sufficient information to issue a valid closure notice to her, and the notice therefore fell outside what I consider to be the proper scope of section 28B(4)(a). Defects of that nature are matters of substance, not form.

69. In relation to Dr Amrolia, I will merely say that I gratefully adopt the analysis of the relevant principles and the authorities given by this court in Archer at [32] to [41]. As Lewison LJ there explained, the test under section 114 must be an objective one, and it is necessary to concentrate on the nature and effect of the relevant omission in the particular circumstances of the case. In the present case, the judge made no findings of fact on this issue; so if it were necessary to do so, we could either remit the matter to him or make our own findings on the basis of the material before us. Given the objective nature of the enquiry, I do not think it would be necessary to remit the question to the judge. For my part, I would have little hesitation in concluding that, if the only defect in the notice given to Dr Amrolia were the failure to state the precise amount of tax said to be due, the test under the section would be satisfied. As in Archer, Dr Amrolia's liability could have been easily worked out from the terms of the notice, and neither he nor his advisers can have been in any doubt what he owed HMRC as a result of the 75% reduction in his share of the LLP's trade loss. HMRC's

omission to amend his self-assessment by stating this figure would therefore have been a matter of form rather than substance. Archer also establishes that section 114 applies irrespective of the forum in which it is relied on: see [33] and [39]. The fact that the issue arises in judicial review proceedings is therefore immaterial.

Overall conclusion

70. For the reasons which I have given, I would therefore allow the appeal of Dr Ranjit-Singh on ground 2, but dismiss the appeal of Dr Amrolia.

Mr Justice Mann:

71. I agree.

Lord Justice Irwin:

72. I also agree.