



## DECISION

1. The two appellants are franchises of Burger King, Mr S S Panesar being the  
5 director of both companies.

2. An assessment had been raised against Panesar Enterprise UK Limited in the  
sum of £46,934 for tax periods 05/09 to 05/12 inclusive. Two assessments had been  
raised against Sipp Food Limited namely an assessment for £12,797 for tax periods  
12/11 and 03/12 and an assessment in the sum of £5,544 for tax period 06/12.

10 3. Appeals had been lodged against both assessments and before us were the  
applications of HMRC that the appeals be struck out as disclosing no appealable  
issue.

4. The under-declarations to output tax came to light on a routine visit to the  
15 companies by Ms Swaby on 5 September 2011. An inspection of the records revealed  
unexplained differences between outputs and the output tax declared. Further  
examination of the accounting system found that two reports were calculating VAT  
incorrectly. The net amount and the VAT had been incorrectly split with the result  
that declared output tax was between 11% and 13% lower than it should have been.  
20 This error had been carried through to the Sage report and the under-declaration on  
returns. Using the companies' own records and figures, Ms Swaby was able to  
calculate the under-declared VAT and the assessments were raised in the figures  
provided by the companies.

5. The Appellants' case was that the under-declaration had not been caused by any  
25 fault of theirs. When the franchises were set up, they installed a software system  
recommended by Burger King. The system was set up and pre-programmed to  
distinguish between standard and zero-rated sales but unknown to the directors, some  
of the products had been mis-coded which resulted in the computerised tilling system  
producing incorrect VAT figures. This in turn accumulated to the under-declaration  
of output VAT.

30 6. Both companies had achieved outstanding operational success both within the  
UK and North Western Europe. However, neither company is in any position to pay  
the amount demanded and further, are unable to raise any additional funds which  
would enable the directors to inject personal funds into the companies. We were told  
35 that if the companies were forced to make the payments assessed, the directors would  
have no option but to consider insolvency. It was Mr Singh's submission and plea  
that in view of the above, the assessments should be vacated in order for the  
companies to be able to continue to trade.

### Conclusions

7. VAT is due on taxable supplies and under s.25 VATA 1994, a taxable person  
40 has to account for VAT by reference to prescribed accounting periods. Under s.73(1)  
VATA, where HMRC detect an under-declaration of output tax they are empowered

to assess, to the best of their judgment, the amount under-declared. Section 83(p) VATA gives a taxpayer the right of appeal to the Tribunal against such an assessment or the amount of such an assessment.

5 8. It is therefore apparent from the wording of s.83(p) that a taxpayer can appeal  
against the fact of an assessment or against its amount. The problem which the  
Appellants have here is that they do not challenge either the fact of the assessments or  
the amounts. It is accepted that there was an under-declaration and that the  
assessments were therefore properly raised and the amounts, being taken from their  
10 their own figures, were also not challenged. The only challenge before the Tribunal was  
that the error did not lie with the companies and that they could ill afford to pay the  
assessments. Neither of these grounds are issues which fall within the jurisdiction of  
the Tribunal to consider. They would be highly relevant to the question of penalties,  
of which there are none, but they do not go to the issue of whether or not the  
assessments themselves can be appealed.

15 9. With great sympathy for both appellants, we have no alternative but to allow the  
application of HMRC to strike out both appeals.

10. We would however make two further points which may be of some assistance to  
the companies. First, Mr Rowe expressly stated that HMRC did not make any  
suggestion that the under-declaration was in any way deliberate. They did not dispute  
20 that the under-declaration was caused by software error. We would like to reiterate  
that view. Mr Panesar and his professional representatives have acted promptly and  
honourably throughout and the fact that we have had to strike out the appeals should  
not be taken as any form of criticism against the companies. Secondly we accept that  
both companies will have difficulty in meeting the assessments. We would very  
25 strongly advise that they should make immediate contact with the Debt Management  
Unit and try and reach an accommodation with them as to instalments which can be  
afforded. We need hardly add that it is imperative that once any such agreement is  
reached, the instalments are maintained and if there is any difficulty in meeting them  
then immediate contact should be made with the DMU.

30 11. For the reasons explained above, the application of HMRC is granted and both  
appeals are struck out as revealing no appealable issue within the jurisdiction of this  
Tribunal.

35 **LADY JUDITH MITTING**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 19 March 2014**

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