[2016] UKFTT 86 (TC)

TC04879

Appeal number: TC/2014/06383

Income tax - appeal against notice of assessment, closure notice and amendment - whether profits correctly assessed by HMRC - yes - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BRIAN McCAULEY **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER MICHAEL ATKINSON

Sitting in public at Tribunal Centre, Albion Street, Leeds on 5 October 2015

Mr Ishmael Musah for the Appellant

Ms Nadine Newham Officer of HM Revenue and Customs for the Respondents

DECISION

The Appeal

1. This is an appeal by Mr Brian McCauley ("the Appellant") against HMRC's decision to issue a Closure Notice and Amendment to his self-assessment dated 12 March 2014, in respect of the year ended 5 April 2012, under s 28A (1) and (2) Taxes Management Act 1970 ("TMA 1970").

2. The amount of tax under appeal is £1,469.22.

3. A Penalty determination was imposed under paragraph 1 of Schedule 24 to the Finance Act 2007 ("Schedule 24") totalling £363.63 but has not been appealed.

4. The points at issue and facts to be determined are:

- The total amount of the Appellant's self-employed income and the source of monies paid into the Appellant's bank accounts that HMRC have treated as income from his self-employment.
- The amount of allowable expenses including the period that the Appellant was in employment as opposed to self-employment, and the apportionment figure used by HMRC to calculate the allowable expenses against self-employed income.
- Whether the Appellant's place of employment was a temporary workplace for the purposes of claiming travel expenses.
- The tax treatment of a van used in part-exchange for the purchase of another vehicle.

Evidence

5. The evidence consisted of two bundles of documents containing copy correspondence between Mr Musah, the Appellant's agent, and HMRC between 2014 and 2015, copy tax returns, notice of assessments and closure notice for the tax year under appeal, copies of the Appellant's bank statements, and other financial records of the Appellant. The Appellant was represented but did not attend the hearing. Mr Musah did not give us a clear explanation of the failure of the Appellant to attend, except to say that the Appellant would wish the appeal to proceed in his absence. As we were satisfied that the Appellant had received due notice of the hearing and much of the evidence was available from the documentation supplied, we agreed that it was in the interests of justice to proceed with the appeal.

Background

6. The Appellant's self-assessment return for year ended 5 April 2012 was submitted on time, electronically. The Appellant describes his business as that of 'plumbing and joinery'. The return gave rise to an overpayment of tax of £5,120.20 which was repaid to the Appellant.

7. On 31 January 2013, HMRC opened an enquiry under s 9A TMA 1970 into the Appellant's 2011-12 tax return.

8. HMRC say that records and information provided by the Appellant's agent revealed various mistakes in the Appellant's accounts and in particular:

i. Incorrect tax deductions of 30% were claimed in respect of the Appellant's self-employed income from SOMEC, rather than the 20% actually deducted.

ii. PAYE income was included in the self-employed accounts.

iii. The cost of a vehicle was wrongly included in expenses claimed.

iv. The financial year appeared to have changed from year ended 5 April to year ended 5 May.

Employment income

9. During the 2011-12 tax year the Appellant was employed by NRL for two periods and Heatcraft Ltd for one period. According to the P14 information held by HMRC, the Appellant worked for NRL from 1 June 2011 to 30 September 2011 and 8 November 2011 to 24 November 2011 and worked for Heatcraft Ltd for just one day on 4 November 2011. The remainder of the time the Appellant worked as a sub-contractor for SOMEC and SSE Contracting Ltd.

10. According to HMRC's records the Appellant received a gross income of £10,764 from these employers but returned only part of his income totalling £8,340. He has now accepted the revised gross employment income figure.

11. Against his employment income, the Appellant claimed the following expenses:

£1,789.00	Business travel and subsistence expenses
£900.00	Fixed deductions for expenses
£635.00	Other expenses and capital allowances

12. In the absence of any information on how the above expenses were calculated, HMRC allowed a notional figure of £300 which has now been accepted by the Appellant.

Self-employment income

13. The Appellant agrees that his accounting year should have been from 6 April 2011 to 5 April 2012 and not 5 May 2012, and so that is no longer an issue.

14. HMRC say that the total amount received by the Appellant by way of sub-contractor payments from SOMEC and SSE Contracting Ltd was £11,603 which has also now been agreed by the Appellant. However, he disputes the amount of tax deducted by SOMEC. He has produced a document detailing the payments received from SOMEC showing tax totalling £3,804 deducted at 30%. HMRC's sub-contractor records for the Appellant shows that SOMEC deducted tax totalling £1,530 at the rate of 20%. HMRC has also cross checked the net amount received according to their records, with the payments into the Appellant's bank account which confirms that tax was deducted at the rate of 20%.

15. On reviewing the Appellant's bank statements the source of the following deposits were queried :

Deposit Date	*Amount*
26/09/11	£73.14
19/10/11	£300.00
24/10/11	£1,000.00
12/12/11	£295.00
28/12/11	£70.00
27/02/12	£2,400.00
Total	£4,138.00

16. HMRC have accepted that the £300 deposited on 19 October 2011 was a deposit refund from Arrow Commercial Van Hire. HMRC has not accepted the Appellant's explanations that the deposit for £295 was a loan repayment from a relative or that the remaining deposits came from the Appellant's mother-in-law to buy presents for the Appellant's children. HMRC do not accept that the deposits on 24 October 2011 of £1,000 and 27 February 2012 of £2,400 were from the Appellant's in-laws as gifts to his children. The Appellant has now accepted the £73.14 and £70.00 are also income receipts. HMRC therefore contends that the balance of £3,838.00 should be treated as income.

17. The Appellant's income from self-employment was amended to £15,441 - (£11,603 plus £3,838), which resulted in a reduction in the Appellant's claimed losses for the tax year 2011-12, and the sum of £1,469.22 being due to HMRC. This remains in dispute.

Expenses and apportionment.

18. The Appellant states that he was self-employed for the majority of the year 2011-12, producing an email from NRL stating he was only employed by them from 8 November 2011 to 25 November 2011. HMRC contend that the Appellant was employed during the periods as outlined in paragraph 9 above. The Appellant's sub-contractor records held by HMRC shows that he was not paid as a sub-contractor during the periods that HMRC hold a P14 record. The tax from employment figure is the total of the tax paid to HMRC, evidence of which was produced to the Tribunal.

19. HMRC say that the majority of the expenses claimed during the Appellant's period of employment should not be allowed as he has failed the test laid out in s 336 Income Tax (Earnings and Pensions) Act 2003. He has failed to supply evidence to show that any travel related expenses claimed against his employment income were incurred in accordance with s 337 and 338 of the same Act, that is, travel in the performance of his duties or travel for necessary attendance. HMRC contend that any travel incurred by the Appellant whilst employed was simply to take him from home to his place of work and back again.

20. HMRC's records show that the Appellant was employed for 5 months and therefore have concluded that for the remainder of the year he was self-employed. HMRC have allowed expenses in accordance with the table below. Where the annual figure is agreed by HMRC, they have agreed the Appellant's claim at 58% which equates to that portion of the year that the Appellant was self-employed, that is 7/12ths. The column headed "Notes" explains how HMRC has reached their decision

on each expense. The Appellant maintains that he was self-employed for the entire tax year, save for 17 days and that the amount allowed in respect of expenses should be 95% of the total expended.

Expense	Agent's Figures	HMRC's Revised Figures	Notes
Telephone	£308.20	£232.00	58% allowed as above
Motoring	£2,288.72	£1,206.00	Business records show total for fuel and repairs for the year as £2,079 (58% allowed)
Materials	£821.76	£352.00	Based on receipts provided by the Appellant
Bank Charges	£62.00	£62.00	Allowed in full
Van Insurance	£706.89	£706.89	Allowed in full
Van Interest	£797.92	£0.00	No evidence produced
Accountancy	£1,378.75	£800.00	58% allowed
Total	**£6364.24**	**£3,358.89**	

Vehicles

21. The Appellant says that he purchased two vehicles in the tax year ended 5 April 2012, a Ford Transit van and a Mitsubishi L200. He claims AIA totalling £16,495 in respect of the purchase of the two vehicles as below:

Cost of Mitsubishi L200 including road tax	£14,010
Less part exchange of Transit van	£ 1,500
	£12,510
Plus alleged cost of Transit van purchase	£ 3,895
AIA claimed	**£16,495**

22. HMRC acknowledge that the L200 was purchased on 4 February 2012 by the Appellant. However there is a dispute regarding how long the Appellant had the Transit van. The agent has produced an invoice showing that the Transit van was purchased on 11 June 2011, but the Appellant has stated during a telephone conversation with the caseworker that he had owned the vehicle for approximately seven years. The Transit van was part-exchanged when the Appellant purchased the Mitsubishi L200. The Appellant's agent asserts that the Ford Transit was purchased during the 2011-12 tax year, stating that he thinks that the Appellant confused himself over that van to one of his older vans which he had had over seven years.

23. However, DVLA records show that the Appellant owned the Ford Transit van, and was its registered keeper from 7 February 2006 to 20 February 2012 and therefore the invoice does not reconcile with the information held by DVLA. HMRC contend that AIA cannot be claimed in respect of the Ford Transit van. The Ford Transit van was purchased just before the Appellant's partnership commenced on 10 February

2006. Capital allowances could have been claimed in respect of the Ford Transit in accordance with the Capital Allowances Act 2001. Capital allowances have to be claimed by the Appellant within the time frame for making a claim. There is no evidence that capital allowances have not already been claimed on the van. An Annual Investment Allowance ("AIA") has been allowed in respect of the purchase of the Mitsubishi L200

24. In the year under enquiry the tax return shows a claim for Capital Allowance of £689, which is in respect of tools. This claim has not been allowed by HMRC as no evidence was produced by the Appellant to show that he had actually purchased the tools.

Conclusion

25. Where a Closure Notice and amendment has been issued the onus is on the Appellant to satisfy the Tribunal that HMRC's figures are incorrect. The standard of proof is the ordinary Civil Standard of the balance of probabilities.

26. The Appellant did not attend to give evidence.

27. HMRC's records and the Appellant's bank statements show that SOMEC deducted tax at 20% and not as alleged by the Appellant at 30%. The tax allowable is the actual amount paid by the Appellant and paid over to HMRC either by the contractor or employer. On the basis of evidence collated and provided to the Tribunal we find that their calculations in that regard are correct.

28. We find that that the source of the unidentified deposits of £295, £1,000 and £2,400 (see para 15) paid into the Appellant's bank accounts are from his self-employment as there is no satisfactory evidence that his relatives or in-laws were the source of these deposits and they were not called to give evidence to support such assertions.

29. Whilst the Appellant was employed, he travelled to the same workplace every day, that is, a permanent workplace whether or not that employment may have been for only a short period of time. Therefore any travel between his home and his place of work cannot be claimed against his employment income as it is ordinary commuting.

30. It is clear from the evidence provided by HMRC that the Appellant was employed for 5 months during the 2011-12 tax year and he was therefore self-employed for 7 months or 58% of the year. We agree the expenses allowed by HMRC against the Appellant's self-employed income and the method of their calculations.

31. In respect of the Appellant's claim for AIA, we conclude that the Appellant only purchased the Mitsubishi L200 during 2011-12 and therefore AIA can only be claimed in respect of the purchase price of that vehicle.

32. The Appellant's original self-assessment resulted in a tax refund of £5,120.20. We concur that the Appellant's revised self-assessment shows tax payable of £1,469.22.

48. For the above reasons we find that the assessments (and penalty - although this has not been appealed) made by HMRC are payable and the appeal is dismissed

49. 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.

MICHAEL CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 8 FEBRUARY 2016