[2017] UKFTT 799 (TC)

TC06205

Appeal number:
TC/2016/03886

INCOME TAX *– assessment to tax and penalty in respect of the disallowance of relief for certain expenses – failure to provide sufficient information or evidence in respect of the expenses – appeal dismissed.*

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appellant

BLERTI PELINGU

- and -

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

TRIBUNAL: JUDGE TONY BEARE
MR TOBY SIMON

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 30 October 2017

The Appellant did not appear and was not represented

Ms K. Murphy, Officer of HM Revenue & Customs, for the Respondents

DECISION

Introduction

1. This is an appeal made by the Appellant against an assessment to income tax of £4,528.06 in respect of the tax year of assessment 2013/2014 and a related penalty assessment of £815.05 in respect of the same tax year of assessment.

2. The Appellant was not represented at the hearing. We noted that notice of the hearing had been sent by post to the Appellant at the address for the Appellant to which all previous correspondence in the process of this appeal had been sent and that a copy of that notice had been sent by email to the Appellant's representative, Infoaccounting 100 Limited, at the email address set out on the notice of appeal. We also noted that, in Section 9 of the notice of appeal – the section dealing with the venue for hearing the appeal – the Appellant had inserted the words "NO HEARING REQUIRED", which we took to be an indication that the Appellant did not intend to attend any hearing of the appeal. We were therefore satisfied that the Appellant had been notified of the hearing and had taken a positive decision not to attend. We attempted to contact Infoaccounting 100 Limited before the hearing to confirm that this was the case but received no answer. In the circumstances, we were satisfied that it was in the interest of justice to proceed with the hearing.

3. Although we decided to proceed with the hearing for the above reasons, it is a pity that the Appellant and his representative did not attend because they might have been able to provide some evidence, either orally or in the form of additional paperwork, to support the claims described below. Without that evidence, we were necessarily limited, in reaching our decision, to the submissions of Ms. Murphy on behalf of the Respondents at the hearing and the papers in the Documents Bundle. Those papers did not include copies of the evidence which had previously been supplied to the Respondents on behalf of the Appellant.

Preliminary procedural issue

4. Before dealing with the two substantive issues in the appeal, there is one preliminary procedural issue which we need to address, arising out of a deficiency in the notice of appeal which was given to the Tribunal. That notice was submitted in the name of Appellant's representative (Infoaccounting 100 Limited) instead of in the name of the Appellant himself. However, the Respondents have not objected to this error and we were content to permit the appeal to proceed.

Discussion

5. The Appellant is a sub-contractor who commenced self-employment in April 2003 and continues to be employed in the construction industry. This appeal relates to certain of the expenses claimed by the Appellant in respect of the tax year of assessment 2013/2014. The Respondents allege that, in the absence of sufficient information or evidence to support the relevant expenditure, that expenditure should be disallowed and the Appellant's taxable income consequently increased.

6. The total expenditure claimed by the Appellant in respect of the relevant tax year of assessment in his return was £18,950.00 although only £18,700.00 of that claim was supported by the figures which were subsequently provided to the Respondents by the Appellant's representative in her letter of 21 June 2015. The items of expenditure set out in that letter were follows:-

(a) cost of goods - £2,161.69;

(b) wages to employees - £13,733.00;

(c) transport - £472.71;

(d) petrol - £48.20

(e) rent - £1,200.00;

(f) telephone - £604.40;

(g) accountancy fees - £450.00; and

(h) CITB levy - £30.00.

7. Of the expenses mentioned above, the Respondents have allowed items (g) and (h) in full, £1,900.00 of the amount claimed as item (a) and £453.30 of the amount claimed as item (f). They have disallowed the remainder of the expenses for the reasons set out below. The amounts which the Respondents have accepted as being deductible amount in aggregate to £2,833.30 but the Respondents have in fact increased that figure slightly to £3,336.00 (which is 10% of the Appellant's declared turnover).

8. Of the expenses which the Respondents have disallowed, the main one is the payment of £13,733.00 as wages. The letter from the Appellant's representative merely stated that the payments were made to "a person who was working with Mr Pelingu because he [needs] someone to clean and tidy after his job". The Respondents' letter of 24 May 2016 says that, in her letter of 21 June 2015, the Appellant's representative claimed that the relevant amount was paid to a Mr Svilen Vasilev and provided no supporting invoices whereas the invoices which the Appellant subsequently provided were made out to a Ms Tsvetanna Tsirkova. There is no mention of Mr Vasilev (or Ms Tsirkova for that matter) in the letter of 21 June 2015 that was contained within the Disclosure Bundle. However, it is clear from the terms of that letter that it contained various attachments, none of which have been provided to us. In the absence of the Appellant to gainsay the allegation made in the Respondents' letter of 24 May 2016, we must accept that the attachments to the earlier letter from the Appellant's representative must have referred to Mr Vasilev.

9. The Respondents allege that the Appellant has provided no explanation as to the difference in the two names and that neither person can be traced. Moreover, the Respondents allege that a review of the Appellant's bank statements did not reveal any payments made to either of the named individuals or even cash transactions matching the invoices provided.

10. To add to the overall confusion, in her letter to the Respondents of 1 June 2016, the Appellant's representative states that there were two members of staff and not one. It is difficult to reconcile that with the fact that the invoices provided to the Respondents in the name of Ms Tsirkova were for the full amount claimed of £13,733.00.

11. Whilst it is unfortunate that we have not seen the materials which were attached to the letter of 21 June 2015 from the Appellant's representative, we agree with the Respondents that it seems unlikely that the Appellant would need to pay away so much of his income to one or more members of staff. That, coupled with the absence of evidence that the payments were made and the confusion over how many members of staff were involved, leads us to conclude that the Respondents are justified in disallowing this expense.

12. As for the telephone bill, the Appellant produced an invoice showing that he paid £604.40 in total for his telephone but did not explain to the Respondents how much of that aggregate amount was for private use. The Respondents have disallowed £151.10 of the amount shown on the telephone bill on the basis of their estimate that 25% of the relevant amount was attributable to private use. The Respondents allege that the Appellant has provided no breakdown of the aggregate amount shown on the telephone bill which might contradict that estimate and we have not been provided with any such breakdown. In the circumstances, we think that the 25% reduction in the aggregate amount to take into account private use is reasonable.

13. Finally, the Respondents allege that the Appellant has produced no evidence to support his claim to deduct £472.71 in respect of transport, £48.20 in respect of petrol, £1200.00 in respect of rent or £261.69 of the £2,161.69 in respect of goods and, again, as we have been provided with no evidence that such amounts were paid, we are bound to agree with the Respondents' conclusion.

14. In summary, in the absence of sufficient evidence to support the claims for relief in respect of the various items of disallowed expenditure, we have no option but to dismiss the Appellant's appeal against the assessment in respect of the tax year of assessment 2013/2014.

15. Turning to the penalty, the Respondents have assessed the penalty at 18%, just 3% above the minimum penalty for careless inaccuracy with a prompted disclosure and 12% below the maximum penalty for careless inaccuracy with a prompted disclosure. In their penalty assessment, the Respondents noted that, whilst the Appellant had provided some assistance to the Respondents during their enquiry, the Respondents had had to remind the Appellant to reply to their letter and forward the requested information, with the result that only 80% and not 100% of the maximum disclosure reduction of 15% was applicable. This is the basis on which the Respondents have calculated a disclosure reduction of 12% (80% x 15%), leading to a penalty of 18%.

16. We agree with the Respondents that the Appellant has not taken reasonable care to ensure that his self-assessment tax return was correct and that the disclosure was prompted. The fact that the breakdown of the expenses set out in the letter from the Appellant's representative of 21 June 2015 shows an aggregate amount that is some £250.00 short of the amount set out in the Appellant's tax return is indicative of that. This means that a penalty in the 15% to 30% range is appropriate.

17. It is fair to say that the Respondents have not covered themselves in glory in handling the present dispute. Their letter of 24 September 2015 was sent to the Appellant's previous representative and the documents sent by the Appellant's representative to the Respondents on 21 June 2015 were returned to his previous representative on 25 January 2016. So, to some extent, the delays which have occurred in the progression of this appeal can fairly be laid at the Respondents' door.

18. However, despite the errors made by the Respondents, we agree that the Appellant has not been as helpful as he could have been in assisting the Respondents with their enquiries. For example, the Appellant was first asked for the information required to support his claims for relief in a letter of 20 April 2015 and did not respond until after a reminder was sent on 4 June 2015. Similarly, although the Respondents' letter of 24 September 2015 was copied to the Appellant's previous representative instead of to his current one, it was also sent to the Appellant and the Appellant did not respond to it by the extended deadline of 3 November 2015 or before the Respondents issued their closure notice of 14 December 2015. We therefore consider that, despite the errors on the part of the Respondents in handling this appeal, a penalty of 18% is reasonable in the circumstances.

19. We therefore dismiss the Appellant's appeal against the penalty assessment.

20. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 7 November 2017