



**TC06982**

**Appeal number: TC/2017/04456**

*INCOME TAX – whether appellant had under-declared trading profits –  
discovery assessments – s 29 Taxes Management Act 1970 – whether  
discovery had become stale - penalties for inaccuracies in tax returns –  
schedule 24 Finance Act 2007 - whether conduct deliberate and concealed –  
appeal allowed in part*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**USMAN CHAUDHARY**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ROBIN VOS  
JOHN ROBINSON**

**Sitting in public at Taylor House, London on 31 January 2019**

**The Appellant did not attend and was not represented**

**Mr John Corbett, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### **Background**

1. The appellant, Mr Chaudhary carried on a second-hand car sales business between 2008 – 2013.
2. HMRC opened an enquiry into his self-assessment tax return for the tax year ended 5 April 2011 and concluded that the profits from the business were understated.
3. As a result of this, HMRC amended Mr Chaudhary's self-assessment for the tax year ended 5 April 2011 and issued discovery assessments for each of the tax years ended 5 April 2009, 5 April 2010 and 5 April 2012. The total amount of additional tax assessed was just under £75,000.
4. In addition, HMRC imposed penalties for the submission of inaccurate tax returns. They took the view that the inaccuracies were deliberate and concealed. On this basis, the penalties were assessed as 77.5% of the tax at stake which amounted to just over £57,000.
5. Mr Chaudhary accepts that the figures shown in his tax returns were incorrect. However, he appeals against the discovery assessments and the amendment to his self-assessment on the basis that the figures for his profits/losses should be in accordance with accounts which he provided to HMRC during the course of the enquiry.
6. Mr Chaudhary's appeal against the penalties is based on the reduction in his taxable profits which he argues for. There is also some suggestion that HMRC should have allowed a greater reduction to take into account his co-operation during the enquiry.
7. It is worth noting that the figures put forward by Mr Chaudhary in respect of the tax year ended 5 April 2013 show a trading loss. HMRC accept that there is a loss but believe that the figure should be lower than that put forward by Mr Chaudhary. Whilst the discussions in relation to this loss do not form part of Mr Chaudhary's appeal, HMRC accept that any relevant principles emerging from the Tribunal's decision may have an impact on the calculation of this loss.

### **Mr Chaudhary's failure to attend**

8. This case was originally listed to be heard in April 2018. Unfortunately, Mr Corbett had an accident and so the hearing was postponed.
9. The case was re-listed for a hearing on 5 September 2018. Notice of the hearing was sent to the parties on 25 July 2018. Mr Chaudhary contacted the Tribunal on 3 September 2018 to say that he had only just received the Tribunal's email in relation to the hearing date, that he was out of the UK and would only be returning on 5 September 2018. He therefore asked for the hearing to be postponed. HMRC did not object to this.
10. On 4 September 2018, HMRC asked both parties to provide any dates to avoid for a hearing between December 2018 – February 2019. The request noted that the

case would be re-listed for a date during this period whether or not the parties responded.

11. Mr Chaudhary did not respond and so, on 16 October 2018, the Tribunal proceeded to list the case for a hearing on 31 January 2019. Notice of the new hearing date was, on that date, sent to both parties. The relevant letter was sent by email to Mr Chaudhary at the same email address as the Tribunal had previously been using, being the email address used by Mr Chaudhary to request the postponement on 3 September 2018. I am therefore satisfied that Mr Chaudhary was notified of the hearing.

12. The Tribunal attempted to contact Mr Chaudhary on the day of the hearing but received only a voicemail message.

13. The Tribunal noted that:

(1) Mr Chaudhary had already requested one postponement and had not contacted the Tribunal to request a postponement of the hearing on 31 January 2019.

(2) There had been a long delay since Mr Chaudhary submitted his original appeal to the Tribunal in May 2017.

(3) Mr Chaudhary had provided a detailed witness statement/skeleton argument setting out the points he wished to make.

14. Taking all of these points into account, the Tribunal concluded in accordance with Rule 33 of the Tribunal Rules that it was in the interests of justice to proceed with the hearing in the absence of Mr Chaudhary.

15. We should note that we were informed by the Tribunal after the hearing that Mr Chaudhary had called the Tribunal on the afternoon of 31 January 2019 (i.e. after the hearing which took place in the morning) and followed this up with an email to the Tribunal that evening in which he asked for the hearing to be rescheduled. As the hearing had already taken place, it was of course too late to postpone/reschedule the hearing.

### **The profit and loss figures**

16. There have been a number of changes to the figures for Mr Chaudhary's profits and losses put forward by both parties during the course of the enquiry and, in the case of HMRC, after Mr Chaudhary's appeal to the Tribunal. The latest figures are as follows:

<b>Tax year</b>	<b>Figures shown on Mr Chaudhary's self-assessment tax return</b>	<b>HMRC's assessments dated 13 January 2017</b>	<b>Profits/losses shown in Mr Chaudhary's latest accounts submitted to HMRC</b>	<b>Figures now proposed by HMRC</b>
2008/09	0	16,520	(3,480)	(3,480)
2009/10	7,276	65,951	25,951	25,951
2010/11	5,937	98,289	65,922	98,289
2011/12	0	63,584	11,507	31,147

17. In making their assessments in January 2017, HMRC used Mr Chaudhary's latest accounts as their starting point but have made three adjustments:

(1) For the tax years ended 5 April 2009, 5 April 2010 and 5 April 2012, they added a figure for closing stock.

(2) For the tax years ended 5 April 2011 and 5 April 2012 they added a figure of 2% of turnover representing the profit on assumed cash sales where the cash has not passed through any of Mr Chaudhary's bank accounts. The 2% figure has been reached by assuming undeclared cash sales of 10% of turnover but with the profit element on those sales being 20% (20% of 10% being 2%).

(3) In respect of the tax year ended 5 April 2011, Mr Chaudhary in his accounts has deducted an amount of VAT which HMRC has disallowed as the VAT has not been paid. This is on the basis that they have undertaken not to pursue Mr Chaudhary separately for any outstanding VAT.

18. Subsequent to Mr Chaudhary's appeal to the Tribunal, HMRC agreed to drop the proposed amendments relating to closing stock. In addition, they have noticed an error in their calculations for the tax year ended 5 April 2012 where they have based their assessment on a previous set of accounts submitted by Mr Chaudhary showing profits of £21,911 rather than the latest set of accounts produced by him which show profits of £11,507. The figures now proposed by HMRC (in the final column in the table above) therefore take account of their acceptance that there should be no adjustment for closing stock and also the amendment for the error in the figures for the year ended 5 April 2012.

19. It will be apparent from the above that the only points at issue in calculating the amount of Mr Chaudhary's profits and losses for the relevant tax years is the adjustment for undeclared cash sales in the tax years ended 5 April 2011 and 5 April 2012 together with the disallowed VAT for the tax year ended 5 April 2011. Our findings of fact set out below are therefore limited only to the facts which are relevant to these two issues.

20. As far as the tax years ended 5 April 2009 and 5 April 2010 are concerned, HMRC accept that Mr Chaudhary's appeal should be allowed so that the assessments

for those years are reduced to reflect the figures put forward by Mr Chaudhary and shown in columns 4 and 5 of the table set out above.

### **The evidence and the facts**

21. The evidence consisted of three bundles of correspondence and documents produced by HMRC, together with witness statements provided by Mr Chaudhary and by Mr D Patel, HMRC's investigating officer.

22. In addition, we heard oral evidence from Mr Patel. We had no hesitation in accepting Mr Patel's evidence which simply confirmed the evidence contained in the correspondence and meeting notes produced during the course of Mr Patel's enquiry.

23. Based on the evidence before us, we find the following relevant facts.

24. Mr Chaudhary established a second-hand car business at some point in 2008 and continued to carry on that business throughout the years to which this appeal relates.

25. On 22 October 2012, HMRC opened an enquiry into Mr Chaudhary's self-assessment tax return for the year ended 5 April 2011.

26. During the course of this enquiry, HMRC issued six taxpayer information notices requiring Mr Chaudhary to produce information which had previously been requested by HMRC but which Mr Chaudhary had failed to provide.

27. On a number of occasions during the enquiry and in his witness statement/skeleton argument Mr Chaudhary has suggested that the business was at various times carried on in partnership with two other individuals, Mr Raza and Mr Singh. He implies in his witness statement that this partnership commenced in 2011 when Mr Chaudhary, together with the other two individuals, acquired business premises, with the lease of the business premises being in the names of the other two individuals as they were existing tenants of the same landlord.

28. HMRC however argue that there was no partnership. In support of this, they refer to the following:

- (1) All of the relevant bank accounts were in Mr Chaudhary's sole name.
- (2) Mr Chaudhary has made conflicting statements as to whether the other partners had an investment in the business. During the course of the enquiry he stated that they did not. However, in his witness statement he says that they did.
- (3) There is no evidence from the bank statements held by HMRC that any payments have been made out of the business to Mr Raza or Mr Singh.
- (4) Mr Chaudhary stated during the course of the enquiry that the partnership commenced in 2008 and came to an end in 2011 whereas in his witness statement/skeleton argument he implies that the partnership only commenced in 2011.
- (5) During the course of the enquiry, Mr Chaudhary stated that the partners' names were not on the relevant leases for the premises used by the business but in his skeleton argument/witness statement he states that, at least one of the

leases was in the name of the partners. Copies of the leases have not been provided.

(6) HMRC tried to trace the partners at the addresses given by Mr Chaudhary but could find no trace of individuals with the relevant names having any connection with those properties. HMRC also have no record of any such individuals as self-employed businessmen.

29. Mr Chaudhary has provided no evidence of the existence of a partnership other than his assertion that one existed. We also note that, at the outset of the enquiry, Mr Chaudhary did not mention the existence of the partnership. This was only something which he referred to when HMRC had obtained details of a number of undisclosed HSBC bank accounts. Given Mr Chaudhary's conflicting statements and also the fact that there is no evidence of any payments being made to Mr Raza or Mr Singh, Mr Chaudhary has not, in our view, discharged the burden of showing that it is more likely than not that he was carrying on a business in partnership rather than as a sole trader.

30. On numerous occasions during the enquiry HMRC pressed Mr Chaudhary to confirm that he had disclosed to them all of his bank accounts including asking him several times to sign a "certificate of bank accounts operated". Mr Chaudhary failed to sign the relevant certificate until 17 January 2015 and, in the meantime, gave answers to HMRC which inferred that he had disclosed all of the relevant bank accounts.

31. In January 2014, HMRC issued third party information notices to Santander and to HSBC. As a result of this, they became aware of six bank accounts with HSBC in Mr Chaudhary's name into which in excess of £1.5 million had been deposited during the period 2008 – 2011.

32. In December 2010, Mr Chaudhary acquired a PDQ machine allowing him to take payments by credit/debit card. Prior to that, the majority of his sales were cash sales (with some sales paid for by bank transfer).

33. Based on Mr Chaudhary's bank statements, 75% of his sales in the tax year ended 5 April 2011 were cash sales.

34. In May 2011, Mr Chaudhary closed his bank accounts with HSBC and opened new business bank accounts with Barclays. The statements for the Barclays bank accounts do not show any evidence of cash sales, with payments generally being made by credit/debit card.

35. During the period in question, Mr Chaudhary lived with other family members and they shared household expenses.

36. During the tax year ended 5 April 2011, Mr Chaudhary's personal bank account with Santander only shows a single cash withdrawal of £200 on 10 March 2011. There are however numerous other payments made by debit card and/or direct debit.

37. Similarly, in the tax year ended 5 April 2012, Mr Chaudhary's bank statements show limited cash withdrawals comprising only three transactions in May 2011, July 2011 and April 2012 totalling £800.

38. During the tax year ended 5 April 2011, Mr Chaudhary was registered for VAT and paid VAT under the margin scheme based on the profits of just under £6,000 originally reported on his self-assessment tax return.

39. Mr Chaudhary has stated that, at some point in 2010, he received a loan from his brother of £5,000 which was repaid by Mr Chaudhary giving to his brother a car in Pakistan which his wife had inherited from her parents. Mr Chaudhary says that the loan was made using cash which his brother had left over at the end of a visit to the UK and so there is no record of the loan.

40. HMRC invited Mr Chaudhary to provide evidence of the loan such as, for example, evidence of where his brother got the cash but no evidence has been provided.

41. The existence of the loan from Mr Chaudhary's brother was initially disclosed in response to a question from HMRC as to how he could maintain himself based on his declared profits for the tax year ended 5 April 2011 of just under £6,000. The implication therefore was that the money was for personal expenditure. However, in subsequent correspondence approximately seven months later, Mr Chaudhary clearly stated that the loan from his brother had been for business purposes. When asked about this discrepancy, his explanation was that he borrowed the money for personal expenditure but as he did not intend to spend the whole amount straightaway, he used it both for personal expenditure and for business purposes.

42. In our minds, Mr Chaudhary's conflicting statements about the purpose of the loan cast doubt on whether his brother in fact made a loan to him at all. In addition to this, the correspondence shows that Mr Chaudhary initially told HMRC that the loan was repaid with interest, the implication being that this was a cash repayment. It was only when HMRC asked further questions in relation to the loan that he then stated that the loan was repaid by transferring to Mr Chaudhary's brother the ownership of the car which his wife had inherited from her parents. In this letter, Mr Chaudhary states that the car was worth £5,000 (not £5,000 plus interest). In our view, it is also inherently unlikely that Mr Chaudhary's brother, at the end of a visit from Pakistan to the UK, would have £5,000 of cash left over.

43. Given that we have no other evidence of the existence of the loan or where Mr Chaudhary's brother obtained the cash to make the loan (despite that evidence being requested by HMRC), we find, on the balance of probabilities, that Mr Chaudhary did not receive a cash loan from his brother in 2010.

### **Burden of proof**

44. HMRC must show that the relevant conditions are satisfied for the issue of the discovery assessments relating to the tax years ended 5 April 2009, 5 April 2010 and 5 April 2012.

45. Mr Chaudhary has the burden of showing that he has been overcharged by the assessments/amendment to his self-assessment.

46. HMRC must show that the penalties have been correctly charged in accordance with the relevant legislation. It is then up to Mr Chaudhary to show why the penalties should be reduced.

## **Discovery assessments**

47. Section 29 Taxes Management Act (“TMA”) allows HMRC to issue discovery assessments if an officer discovers that there is income which has not been assessed to tax.

48. Where (as in this case) the taxpayer has submitted a self-assessment tax return, a discovery assessment can only be made if the under assessment was brought about carelessly or deliberately by the taxpayer or if, when HMRC ceased to be entitled to enquire into the tax returns, an HMRC officer could not have been reasonably expected on the basis of the information available to him to be aware of the under assessment.

49. In this case, HMRC say that the discovery that there had been an under assessment to tax took place when they received and then reviewed the HSBC bank statements in the summer of 2014.

50. The Upper Tribunal has considered in a number of cases whether a discovery may become “stale”, thus invalidating an assessment which is subsequently made based on the earlier discovery.

51. In this case, the assessments were not made until January 2017, some two and a half years after the original discovery.

52. Mr Corbett submits that the delay in making the discovery assessments resulted purely from the ongoing discussions with Mr Chaudhary in order to try to reach a negotiated settlement and that the assessments for all years (including the amendment for the self-assessment for the year under enquiry) were made as soon as it became clear that no agreement would be reached.

53. The Upper Tribunal recognised in *Pattullo v HMRC* [2016] UKUT 270 (TCC) that a discovery could be kept fresh for the purposes of being acted upon later. One example which was given [at 53] was a situation where the taxpayer is notified of the discovery in the expectation that matters could be resolved without the need for a formal assessment to be made.

54. HMRC notified Mr Chaudhary of their discovery in July 2014. As a result of this, Mr Chaudhary appointed an accountant. It was made clear to the accountant at a meeting in November 2014 that, as a result of the discovery of the undisclosed bank accounts, HMRC would be reviewing earlier and later years as well as the year ended 5 April 2011 which was the subject of the enquiry.

55. Discussions relating to the correct amount of the profits and losses continued throughout the period ending with the issue of the assessments in January 2017.

56. On this basis, I accept Mr Corbett’s submission that the discovery in this case has not become stale as a result of the time which elapsed between the making of the discovery and the making of the assessments. It must be right that HMRC cannot be required to make discovery assessments while they are actively pursuing their enquiries with a view to trying to reach a settlement with the taxpayer.

57. Turning to the remaining condition which needs to be satisfied, HMRC say that the first condition is satisfied as it is clear (in their view) that Mr Chaudhary’s conduct



was deliberate. This is discussed in more detail below in relation to penalties but it will be seen that we accept that Mr Chaudhary deliberately understated his profits.

58. We are therefore satisfied that HMRC have shown that the necessary conditions for the issue of the discovery assessments have been satisfied.

### **Calculation of the profits/losses**

#### *The disallowance of VAT*

59. Mr Chaudhary's accounts for the year ended 5 April 2011 show a deduction of £18,407 representing VAT under the relevant margin scheme on gross sales of £716,428. HMRC have disallowed this deduction on the basis that the VAT has not been paid. They have also undertaken not to pursue Mr Chaudhary for any VAT. They make the point that this is a benefit to Mr Chaudhary as the result is that, although he will have to pay tax on an additional £18,407 of profits, he will not have to pay the full £18,407 as a VAT payment.

60. In his skeleton argument, Mr Chaudhary does not give any reason why the VAT should not be disallowed. Instead he states that HMRC have not given any reason for proposing to increase the profit by the relevant amount.

61. It seems apparent from this that Mr Chaudhary has not understood that the reason for this element of the increase in the amount of the profit for the tax year ended 5 April 2011 is the disallowance of the VAT.

62. On the basis that HMRC do not intend to pursue Mr Chaudhary for the VAT (which they have undertaken not to do), we accept that Mr Chaudhary's profits cannot be reduced by a potential VAT payment which will never be made.

63. We should note that, although Mr Chaudhary has apparently paid VAT under the margin scheme on his declared profits for the year ended 5 April 2011, Mr Corbett explained that these profits do not form part of the profits disclosed by Mr Chaudhary in his latest accounts. This is because the latest accounts are based purely on the receipts and payments in the undisclosed HSBC bank accounts and the profits which were originally disclosed are based on receipts and payments made through a different bank account. Mr Patel, in his evidence, told us that, although Mr Chaudhary's latest accounts did not include the original profits disclosed on his self-assessment tax return, Mr Patel had decided to accept the figures put forward in Mr Chaudhary's accounts in order to try to reach a settlement. The result of this is that the VAT paid by Mr Chaudhary on the profits he originally disclosed does not form part of the figure of £18,407 which HMRC is now disallowing.

#### *The adjustment for cash sales*

64. As mentioned above, in the tax year ended 5 April 2011, approximately 75% of Mr Chaudhary's sales (as evidenced by the HSBC bank statements) were paid for in cash. HMRC have nevertheless increased the profits for that year by an amount equal to 2% of turnover on the basis that Mr Chaudhary has not been able to demonstrate how he has met his personal expenses during the relevant tax year.

65. HMRC's starting point for this was that Mr Chaudhary only returned profits of £5,937 for the year on his tax return and so it was not clear how Mr Chaudhary was supporting himself. However, Mr Chaudhary now accepts that his profits were £65,922 which HMRC have increased to £84,329 as a result of the disallowance of the VAT.

66. Mr Corbett's response to this was that even though the accounts now show substantial profits, there is no evidence of any withdrawals of cash by Mr Chaudhary from his bank accounts during the relevant tax year other than a withdrawal of £200 on 10 March 2011. He argues that, although the bank account statements show certain expenditure paid for by debit card and/or direct debit, Mr Chaudhary must have had a need for some cash and so the only place this could have come from is undeclared cash sales where the cash never went through any of Mr Chaudhary's bank accounts.

67. The position is slightly different for the tax year ended 5 April 2012. Mr Chaudhary's case is that he acquired a PDQ machine (enabling him to take card payments) in December 2010 and that he therefore ceased making cash sales.

68. HMRC have however pointed out that Mr Chaudhary made cash sales in excess of £35,000 in April and May 2011 based on the HSBC bank statements. These have been included by Mr Chaudhary in his revised accounts for the tax year ended 5 April 2012. However, no cash sales have been included for the period from June 2011 – March 2012. It is, they say, inconceivable that there were no cash sales during this period and that Mr Chaudhary's explanation that all sales were paid for by card payments or bank transfer is not credible given that he was still receiving significant cash payments several months after the PDQ machine had been acquired.

69. They also make the same point in relation to the tax year ended 5 April 2012 about the limited cash withdrawals (£800 in total) shown in Mr Chaudhary's bank statements.

70. Mr Chaudhary has explained that when the HSBC bank accounts were closed in May 2011 and the Barclays accounts were opened, he stopped taking cash payments from customers as Barclays levied a charge of 2.5% on all cash deposits.

71. On balance, we think it is more likely than not that Mr Chaudhary did indeed have further cash sales in these two tax years where the relevant cash amounts did not go through his bank accounts. This is primarily on the basis that Mr Chaudhary has at no point explained any source of cash to meet his personal expenditure other than the £5,000 loan which he says he received from his brother in 2010. As mentioned above, we have found as a fact that, on the balance of probabilities, that loan was not made.

72. We accept that, as Mr Chaudhary was living with family members, his day to day living costs may have been less than if he were living on his own. However, we have no evidence as to the amount of those day to day expenses. In any event, given the existence of significant profits based on HMRC's proposed figures, the main point in our minds is not whether Mr Chaudhary had sufficient resources to meet those expenses, but instead is where he obtained cash to fund his cash expenditure.

73. We appreciate that more and more payments are made these days by debit/credit card and we have found as a fact that a significant number of payments were made by Mr Chaudhary by debit card. However, we do not accept that Mr Chaudhary's cash expenditure in a year would be as low as £200 or £800.

74. Given the history of cash sales, the overwhelming likelihood is that there were cash sales in both of the relevant tax years which did not go through Mr Chaudhary's bank accounts and which provided him with cash to meet his personal expenditure.

75. For each of the relevant tax years, the amount added by HMRC to Mr Chaudhary's profits is 2% of his turnover. For the year ended 5 April 2011, this amounts to £13,960 and for the year ended 5 April 2012, the amount was £19,640.

76. In his evidence, Mr Patel admitted that these figures are pure estimates but ones which, based on the past level of cash sales, he did not feel were unreasonable.

77. It is up to Mr Chaudhary to show that he has been overcharged by the assessments. He has not been able to produce any detailed records of vehicles which he has purchased and sold and so the accounts which he has put forward have been based purely on the entries in his bank accounts. Mr Chaudhary has not produced any evidence from which we might be able to conclude that the figure for cash sales should be any less than the amounts suggested by HMRC. On the evidence we have before us, our conclusion is that the proposed uplift to reflect cash sales which do not pass through any bank account is reasonable.

### **Conclusion in relation to the assessments**

78. Mr Chaudhary has been overcharged by the assessment for the year ended 5 April 2009 which should be reduced to nil.

79. Mr Chaudhary has been overcharged by the assessment for the year ended 5 April 2010 which should be reduced so that it reflects profits from his trade of £25,951.

80. The amendment made by HMRC to Mr Chaudhary's self-assessment for the year ended 5 April 2011 is accepted and shall stand good.

81. Mr Chaudhary has been overcharged by the assessment for the tax year ended 5 April 2012 which shall be reduced so that it is based on profits from the trade of £31,147.

### **Penalties**

82. HMRC have charged penalties under schedule 24 of Finance Act 2007 ("schedule 24") in respect of inaccuracies in Mr Chaudhary's tax returns.

83. They have taken the view that his conduct was deliberate and concealed and that the disclosures were prompted.

84. On this basis, the standard penalty is 100% of the tax at stake (paragraph 4(2)(c) of schedule 24). This can be reduced to reflect the quality of a taxpayer's disclosure (paragraph 9 of schedule 24) but in the case of a prompted disclosure cannot be reduced below 50% of the lost tax (paragraph 10(2)(b)) of schedule 24).

85. In this case, HMRC have made a reduction of 45% to reflect the quality of Mr Chaudhary's disclosures. This does not mean that the penalty itself is reduced by 45%. The 45% reduction is applied to the difference between the minimum and the maximum penalties. The final penalty rate is therefore 77.5% (being 100% reduced by 45% of 50%).

86. HMRC's conclusion that the inaccuracies were deliberate and concealed is based on the undisclosed bank accounts.

87. HMRC acknowledge Mr Chaudhary's explanation that he was in partnership with two other individuals who did not want to declare their income but reject this on the basis that there is, in their view, no evidence that any partnership existed.

88. We have found as a fact that, on the balance of probabilities, there was no partnership. It follows from this that the profits were all Mr Chaudhary's profits and that his failure to declare those profits and to reveal the existence of the HSBC bank accounts was both deliberate and concealed.

89. Even if there were a partnership, Mr Chaudhary cannot have believed that he had declared his share of any partnership profits as there is no doubt from the evidence that the profits which he did declare did not include any of the profits revealed by the undisclosed HSBC bank accounts.

90. Given that the inaccuracies only came to light as a result of HMRC's enquiry into Mr Chaudhary's tax return for the year ended 5 April 2011, there is also no doubt that any disclosures made by Mr Chaudhary were prompted.

91. On this basis, we accept that HMRC's starting point for the calculation of the penalties is correct – i.e. that the standard penalty is 100% of the tax at stake and the minimum penalty is 50% of the tax.

92. Turning to the reduction for disclosure, HMRC have allowed a reduction of 15% for telling HMRC about the inaccuracies. They did not allow any more than this given the non-disclosure of the bank accounts and of the full extent of Mr Chaudhary's business operations.

93. HMRC have allowed a reduction of 20% for helping HMRC understand the extent of the inaccuracies. The reason they have not allowed any more than this is that they had to issue six information notices to Mr Chaudhary in order to get all of the information and documents they have requested.

94. Finally, HMRC have allowed a further 10% reduction for giving access to business records. The reason for not allowing a larger reduction is that HMRC had to approach the Tribunal to authorise the issue of third party information notices in order to obtain details of the undisclosed bank accounts.

95. As mentioned above, the total reduction for disclosure given by HMRC is therefore 45% of the difference between the maximum penalty of 100% and the minimum penalty of 50%. 45% of the difference of 50% is 22.5% and so the 100% penalty has been reduced by 22.5% to 77.5%.

96. On an appeal against HMRC's decision as to the amount of a penalty, the Tribunal may substitute its own decision as far as the reduction for disclosure is concerned.

97. We have considered carefully the reductions for disclosure made by HMRC and in our view they are entirely reasonable in the circumstances.

98. HMRC may make a further reduction to the amount of a penalty if they believe that there are special circumstances which would make it right to do so. HMRC have considered whether there are any special circumstances which would justify a reduction in the amount of the penalties but have concluded that there are none.

99. Mr Chaudhary has not suggested that there are any such special circumstances.

100. The Tribunal can only make a reduction based on special circumstances if it concludes that HMRC's decision on this aspect is "flawed" in a judicial review sense (paragraph 17(3) of schedule 24). This would be the case if HMRC have not taken into account all of the relevant circumstances or if, having taken into account the relevant circumstances, have reached a decision which no reasonable officer of HMRC could have made in the circumstances.

101. There is no evidence that HMRC have not taken into account all of the relevant circumstances and there is no suggestion that their conclusion is one which is wholly unreasonable. On this basis, their decision is not flawed in a judicial review sense and the Tribunal has no jurisdiction to reconsider this aspect.

102. Even if we could make our own decision in relation to special circumstances, we would agree with HMRC that, in this case, there are no special circumstances justifying any further reduction in the amount of the penalties.

103. HMRC accept that the penalties for the tax years ended 5 April 2009, 5 April 2010 and 5 April 2012 must be amended to reflect the reduced tax liabilities based on the figures for profits/losses which they now accept are lower than the figures on which the original assessments were based.

104. As will be seen above, we have accepted HMRC's revised figures. As far as penalties are concerned, this means that the penalty for the tax year ended 5 April 2009 is cancelled as there is no tax liability. The penalties for the tax years ended 5 April 2010 and 5 April 2012 should be reduced so that the penalty is 77.5% of the tax which is due based on the reduced profit figures.

105. The penalty for the tax year ended 5 April 2011 is upheld as we have upheld the original assessment on which the penalty charged for that year has been based.

## **Decision**

106. Mr Chaudhary's appeals against the assessment and the associated penalty for the tax year ended 5 April 2009 are allowed and both of these are reduced to nil.

107. Mr Chaudhary's appeals against the assessment and the associated penalty for the tax year ended 5 April 2010 are allowed in part. The assessment is reduced to reflect profits of £25,951 and that the penalty is reduced to 77.5% of the reduced amount of tax shown by the amended assessment.

108. Mr Chaudhary's appeals against the amendment to his self-assessment and the associated penalty for the tax year ended 5 April 2011 are rejected and the amendment to the self-assessment and the penalty are both upheld.

109. Mr Chaudhary's appeals against the assessment and the associated penalty for the tax year ended 5 April 2012 are allowed in part. The assessment is reduced to reflect profits of £31,147 and the penalty is reduced to 77.5% of the reduced amount of tax shown by the amended assessment.

110. 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.

**ROBIN VOS  
TRIBUNAL JUDGE**

**RELEASE DATE: 14 FEBRUARY 2019**