



TC07584

Appeal number: TC/2019/02375

INCOME TAX – CIS deductions – lack of documentation – whether deductions should be allowed – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MIROSLAW PAWLIKOWSKI

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE FAIRPO
MR DUNCAN McBRIDE**

Sitting in public at London on 7 February 2020

The Appellant did not appear and was not represented

Miss Rose Grainger, presenting officer, for the Respondents

DECISION

1. The appellant did not attend and was not represented. The Tribunal telephoned the mobile telephone number in the papers for the appellant and the telephone numbers in the papers for his accountant. There was no response from any of the numbers.
2. We considered that it was clear that the appellant was aware of the hearing as it had been clearly communicated via methods to which a response had been previously received. HMRC also noted that they had sent the bundle to the appellant and his accountant, with a covering letter making reference to the details of the hearing.
3. HMRC argued that the hearing should take place in the absence of the appellant on the basis that it was obvious that the appellant had been notified of the hearing and had made no objection to its proceeding, having been warned of the consequences of not appearing.
4. We had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”). We decided that it was in the interests of justice to proceed with the hearing in the absence of the appellant in accordance with Rule 33 of the Rules since there was no explanation as to the non-appearance by or for the appellant. The appellant’s attention is drawn to Rule 38 of the Rules in the event that there was good cause for the non-attendance at this hearing.

Introduction

5. This is an appeal against a refusal by HMRC to allow certain Construction Industry Scheme (CIS) deductions claimed by the appellant, Mr Pawlikowski, as a credit against income tax in his self-assessment return for the 2016/17 tax year.
6. The discrepancy in question is £1,184.41. We note that, in his Notice of Appeal, Mr Pawlikowski stated that the amount of tax disputed is £2,099.37. However, on reviewing the bundle, this amount includes adjustments relating to undeclared income from the sale of scrap metal and to payments acknowledged by Mr Pawlikowski’s representative in correspondence to have been made gross, together with interest. The grounds of appeal, as set out below, relate wholly to the CIS deduction discrepancy.

Background

7. Mr Pawlikowski is a sub-contractor in the construction industry.
8. He claimed CIS deductions of £6,628 against his income tax charge in his 2016/17 tax return. HMRC opened an enquiry into that return on 6 April 2018.
9. Following a request for information, Mr Pawlikowski’s accountant provided copies of his bank statements and, subsequently copies of invoices sent by Mr Pawlikowski to the contractor to whom Mr Pawlikowski provided services. No copies of CIS deduction statements were provided.

10. HMRC cross-checked the information provided against their internal records and confirmed and allowed £5,433.59 of the claimed deductions. This appeal relates to the difference between the claimed deductions and the amount allowed by HMRC, £1,184.41.

Appellant's case

11. Mr Pawlikowski states in his grounds of appeal that he has been unable to obtain CIS deduction statements from the contractor, despite several requests. He argues that the documents provided (bank statements and invoices) should be sufficient evidence of the deductions. He further notes that he does not understand how HMRC can request documents which he is not responsible for issuing.

12. Mr Pawlikowski further argues that it is the contractor's responsibility to provide CIS deduction statements and to pay the CIS deduction to HMRC. He considers that HMRC should request the payment from the contractor accordingly. He also argues that, if HMRC do pursue the contractor as well, they will receive the tax twice.

13. The invoices produced by Mr Pawlikowski in support of his claim for deductions include the following information: work done, number of days worked, gross daily rate, 'gross salary', '20% tax deduction', and 'net salary'.

14. Mr Pawlikowski's bank statement included details of payments received from the contractor during the tax year 2016-2017.

15. In correspondence, Mr Pawlikowski's accountants advised that the turnover in Mr Pawlikowski's tax return had been calculated by using the information in the bank statements and then adding tax deducted by two contractors. They subsequently acknowledged that the payments from the second contractor had been received gross.

HMRC's case

16. HMRC submitted that the onus of proof rests on the appellant to substantiate the validity of his claim to CIS deductions (s50(6) Taxes Management Act (TMA) 1970). The burden of proof is the ordinary civil standard, the balance of probabilities.

17. HMRC further submitted that s62(2) Finance Act 2004 provides that a sub-contractor may only claim credit for CIS deductions which are actually made, as the legislation refers to the 'sum deducted' as being treated as income tax paid in respect of the sub-contractor's relevant profits. Where there has been no deduction, no credit can be given.

18. HMRC acknowledged that in certain circumstances contractors do not issue payment deduction statements but note that this does not circumvent the need for sub-contractors to keep accurate records so as to ensure accurate returns.

19. In this case, HMRC submitted that they had attempted to assist Mr Pawlikowski by attempting to verify the deductions by cross-referencing the information from his bank statements and invoices against their own records. They confirmed that they had verified and allowed £5,443.59 of the deductions claimed.

20. HMRC noted that the invoices supplied by Mr Pawlikowski, taken at face value, exceeded the CIS deduction amount claimed on the self-assessment tax return as the total CIS deductions stated in the invoices amounted to £7,368.02.

21. HMRC stated that they had allowed a deduction for the discrepancy of £1,184 in calculating Mr Pawlikowski's turnover for tax purposes.

22. HMRC therefore submitted that they had attempted to assist Mr Pawlikowski, but that they cannot base tax calculations on unevidenced assertions; s12B TMA 1970 requires that a taxpayer keep records as required to be able to make a complete and accurate return. In this case, they submitted that Mr Pawlikowski had failed to keep such records.

Discussion

23. The question for this tribunal was whether HMRC were correct to disallow the sum of £1,184 claimed as CIS deductions. We note that they have allowed this amount as a deduction from turnover instead.

24. We agree that the burden of proof is on Mr Pawlikowski to show that he is entitled to the CIS deductions (s50(6) Taxes Management Act 1970 ("TMA 1970")); we consider that it is for an appellant to demonstrate that they have been overcharged).

25. We considered the evidence put forward by Mr Pawlikowski in correspondence as to the deductions, being invoices and bank statements, and make the following findings of fact:

(1) Mr Pawlikowski initially claimed CIS deductions in respect of payments from two contractors, but later acknowledged that one of the contractors had paid him gross.

(2) It was not disputed that the amount of the '20% tax deductions' shown on the invoices exceeded the amount claimed as CIS deductions in Mr Pawlikowski's tax return.

(3) Only two of the invoices (each for a net amount of £905) can be matched to amounts received in the bank statements. HMRC has allowed a credit for each of these (amongst others). The receipts shown in the bank statements do not otherwise correlate with invoice amounts, either individually or cumulatively.

26. We note that s62(2) Finance Act 2004 states that:

“If the sub-contractor is not a company a sum deducted under section 61 and paid to the Board is to be treated as being income tax paid in respect of the sub-contractor's relevant profits.”

27. We note also that s12B(1) TMA 1970 states (as relevant for the 2016-17 tax year) that:

“Any person who may be required ... to make and deliver a return for a year of assessment or other period shall ... keep all such records as may

be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period.”

28. We have considered Mr Pawlikowski’s submissions that he has provided evidence of the deductions, but we do not consider that the documents provided can be regarded as evidence of CIS deductions made for the following reasons:

- (1) the invoices do not, as stated, correlate to payments received;
- (2) the total amounts described as ‘tax deductions’ on the invoices exceed the CIS deductions claimed by Mr Pawlikowski;
- (3) CIS deductions were claimed by Mr Pawlikowski for payments by another contractor which were later acknowledged to have been made gross.

29. Accordingly, we find that the invoices do not provide sufficient evidence for the claim for the CIS deductions. The bank statements have no information as to deductions made and so, equally, do not support the claim for the CIS deductions.

30. We have taken Mr Pawlikowski’s submissions that HMRC should pursue the contractor for the deductions, and the possibility of double recovery, to be an argument that HMRC are acting unfairly in refusing to allow his claimed CIS deductions in full.

31. However, we consider that it is well established that this Tribunal has no general judicial review function and so does not have jurisdiction to consider the fairness, or otherwise, of HMRC’s actions where it does not have specific jurisdiction to do so (*Hok Limited* [2012] UKUT 363 (TCC)). The relevant provisions of TMA 1970 and Finance Act 2004 contain no such specific jurisdiction and, accordingly, we consider that we do not have jurisdiction to consider whether HMRC’s actions should be regarded as fair.

Decision

32. We find that Mr Pawlikowski has not satisfied the burden of proof on him to show that he is entitled to additional CIS deductions of £1,184. As we have no jurisdiction to consider the fairness or otherwise of HMRC’s actions, the appeal is therefore dismissed.

33. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 14 FEBRUARY 2020