[2020] UKFTT 0417 (TC)

TC07894

INCOME TAX – closure notice – deductible expenses - overclaimed purchases – amended self-assessment confirmed – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/05841

BETWEEN

MRS PARAMJIT UPPAL **Appellant**

-and-

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL
MRS NORAH CLARKE

Hearing conducted remotely by video on 16 September 2020

The Appellant in person assisted by her accountant Mr Mahmood Ahmad of Agnito Chartered Accountants and Tax Advisers

Mrs Helen Davies, Officer of HM Revenue & Customs, for the Respondents

DECISION

INTRODUCTION

1. This is an appeal against a conclusion set out in a closure notice issued by the respondents (or "**HMRC**") on 16 May 2019 following an enquiry into the appellant's tax return for the 2015/2016 tax year. That closure notice originally amended the appellant's self-assessment for that tax year to tax of £2776.02. Following a review, the amount has been reduced to £2,622.32, and it is that latter figure that HMRC ask us to confirm is the amount of income tax owed by the appellant for that tax year.

2. It is HMRC's view that the appellant overstated her purchases by £14,750. This resulted in the difference between those purchases and her sales being reduced and so her taxable profit being reduced. The appellant does not deny that the purchases were overstated but claims that the reason for that was likely to be staff theft.

3. The issue which we have to determine is whether the appellant has overstated her purchases on her 2015/2016 tax return. We do not have to determine (if there has been an overstatement) why that overstatement has arisen. We say this because much of the thrust of the appellant's case and the discussion at the hearing (and we include in this term the evidence given by the appellant and her cross examination by Mrs Davies) focused on why the overstatement might have arisen. Whilst that might be pertinent to an appeal against penalties, where the appellant's behavior for submitting an incorrect return might be the subject of examination, it is not strictly relevant to the issue which we have to decide. And in this regard, we have found as a fact that the amounts paid to the relevant supplier are the amounts submitted by HMRC. Accordingly, for reasons which we spell out more fully later in this Decision, we find that the appellant has overstated her purchases by the amounts claimed by HMRC and we accordingly dismiss her appeal.

THE LAW

4. There is no dispute about the law. Under section 50(6) Taxes Management Act 1970, an assessment (including a self-assessment and an amended self-assessment) shall "stand good" unless the taxpayer establishes that it is wrong.

5. Case law clearly establishes that the onus is on the taxpayer not only to suggest that the assessment is incorrect but also to provide evidence as to what the correct amount to which he or she should be assessed, is more likely to be.

6. In *Haythornthwaite & Sons Ltd* v *Kelly* 11 TC 657 the Court of Appeal said:

> "Now it is to be remembered that under the law as it stands the duty of the Commissioners who hear the appeal is this: Parties are entitled to produce any lawful evidence, and if on appeal it appears to the majority of the Commissioners by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is over-charged by any assessment, the Commissioners shall abate or reduce the assessment accordingly; but otherwise every such assessment or surcharge shall stand good. Hence it is quite plain that the Commissioners are to hold the assessment standing good unless the subject - the appellant - establishes before the Commissioners, by evidence satisfactory to them, that the assessment ought to be reduced or set aside".

7. And as Walton J. put it in *Nicholson v Morris* 1977 STC 162, referring to the Revenue figures: "I do not think that anybody pretends that those figures are anything other than estimates or guesses. They are the best that the Revenue can do on the materials in front of them and they may very well, for ought I know, be a very poor approximation to the truth indeed. But the situation here is that once leave has been given to make the additional assessments and the additional assessments have been made, the onus is on the taxpayer to show that they represent over-assessments".

EVIDENCE AND FACTS

8. We were provided with a comprehensive bundle of documents. The appellant handed up (electronically of course) two or three further documents which in her view were relevant to the staff theft and destruction of invoice points. She gave oral evidence on which she was cross examined by Mrs Davies as, too, did her accountant, Mr Ahmad. As far as the facts relevant to the issue for determination in this appeal, are concerned, we found the appellant to be a credible witness. However, when it came to speculation concerning the reasons as to why her purchases were overstated, we recognise that, notwithstanding the appellant's desire to assist the tribunal, much of that speculation was not evidence of fact, and we have treated it accordingly. And as we have briefly mentioned above, there is no dispute concerning the essential fact which we have to find in this appeal, namely the amount actually spent by the appellant on goods purchased from a supplier, Catering Connect Ltd ("**Catering Connect**"). And for this reason we have not set out in detail every piece of evidence which was presented to us. From the evidence we find the following relevant facts:

(1) During 2015/2016 tax year the appellant operated a fish and chip takeaway shop. Her husband ran a post office and convenience store which was located next door to her fish and chip shop. She ceased trading in October 2017.

(2) The appellant paid her suppliers in cash. The suppliers would bring the supplies to the shop and would be paid either by her or her employees. The cash was paid out of the till in the fish and chip shop, but if there was insufficient cash in that till, either she or an employee would take the supplier's invoice next door to the convenience store, be given cash from the till in the convenience store, take the cash back to the fish and chip shop to pay the supplier, and then give the receipted invoice to the person operating the till in the convenience store.

(3) The amounts paid to the suppliers, and in particular Catering Connect were the amounts set out on the receipted copy invoices which were presented in evidence as part of the bundle.

(4) The appellant's system for recording her purchases was to place the paid and receipted invoices in a box in the fish and chip shop. They would stay there until she gave them to Mr Ahmad when he needed to draw up her accounts and to submit her tax return. Mr Ahmed would then return the original receipted invoices to her.

(5) The receipted invoices that she received back from Mr Ahmad for her purchases from Catering Connect during the 2015/2016 tax year were destroyed in a fire, and her copies of the original invoices from that supplier for that tax year no longer exist.

(6) During the 2015/2016 tax year the appellant was absent from the business on maternity leave, but it is her evidence that the same system applied during her absence

regarding payment of invoices and onward transmission of receipted invoices to Mr Ahmad as had applied whilst she was present in the business.

(7) On 31 January 2017 the appellant filed her self-assessment tax return for the 2015/2016 tax year which included a deduction for business expenses of £77,859.53. The respondents enquired into this return and the appellant provided schedules, compiled by Mr Ahmad, setting out the daily deductions that had gone into making up the overall deduction in her tax return. HMRC then obtained information from the appellant's suppliers, and in particular, all of the invoices for the tax year for supplies made to her by Catering Connect. The appellant's schedule of purchases from Catering Connect indicated that she had paid £23,965.17 for purchases from that supplier in that tax year. However the invoices supplied by Catering Connect show that the total invoices for that tax year amounted to £9,215.08. We find as a fact that it is this smaller amount that was paid by the appellant to Catering Connect and not the amount of £23,965.17 set out in the appellant's schedule and which was reflected in her tax return.

(8) On 24 October 2018 HMRC, the appellant, and Mr Ahmad had a meeting at which the HMRC information and the record discrepancies were discussed. The appellant was not able to provide an off-the-cuff response to these discrepancies.

(9) However on her return to the fish and chip shop she discussed these discrepancies with her husband and two then current employees and came to the conclusion that the discrepancies were likely to have been a result of staff theft.

(10) Following that discussion, the appellant contacted the police to inform them of her suspicions. However some two or three weeks later the police informed her that given the passage of time, they would not be taking the matter any further as it would be very difficult to secure a conviction.

(11) On 16 May 2019 HMRC issued a closure notice amending the appellant self-assessment return by reducing the purchase figure from £77,859.53 to £62,579.53. The appellant appealed against this amendment on 30 August 2019.

(12) On 2 September 2020 HMRC reviewed the case and adjusted that amendment to £63,109.83, reflecting the purchases from only Catering Connect and no other supplier.

DISCUSSION

9. The appellant does not dispute the validity of the enquiry, the closure notice, nor the amendment to her self-assessment return for the tax year 2015/2016. And we find that all are valid.

10. And so the burden is on her to show, on the balance of probabilities (i.e. it is more likely than not) that the additional amount of £14,750 which has been added back to her reported profits for the 2015/2016 tax year, resulting from an over declaration of purchases of that amount from Catering Connect, is wrong; and the amount originally claimed as a deduction for purchases from that supplier was the amount set out in her schedule, namely £23,965.17.

11. We are afraid that she has not persuaded us that that is the case. Indeed she has made no submissions to that effect (nor did Mr Ahmad). It is clear to us from the evidence that the amounts actually paid to Catering Connect were the amounts set out in the copy invoices

supplied by them to HMRC. Those copy invoices were included in the bundle and the vast majority have the handwritten words "paid" or something similar scribbled on them. There is no suggestion that more than the amount set out on the invoice was paid. There seems no commercial reason why the appellant's employees would overpay a supplier. And it is commercially inconceivable that they would do so unless Catering Connect were involved in some form of fraudulent activity. There has been absolutely no suggestion of this nor that there has been any form of misbehavior on their part. The appellant's evidence is that when Catering Connect delivered supplies to the fish and chip shop, they were paid in cash, in the amount that was set out in the invoice presented to the individual present in the fish and chip shop. If there was insufficient cash in the till in the fish and chip shop, then the balance was made up from cash "borrowed" from the till in her husband's convenience store. There is no suggestion that anything other than the amount set out on the invoice was actually paid in cash when Catering Connect delivered a supply. As we say, the appellant made no submission to this effect.

12. And so it is our conclusion that the amount paid to Catering Connect was not the amount set out in the appellant's schedule, namely £23,965.17 but the amount set out in the copy invoices supplied by Catering Connect, namely £9,215.08. The difference of £14,750 is the amount by which HMRC have adjusted the appellant's self-assessment tax return for the 2015/2016 tax year. It is our view that this adjustment is correct. We therefore uphold that amendment and dismiss the appellant's appeal against that amendment.

13. Mr Ahmad made a submission that if the £14,750 had actually been paid out by the appellant, not to a supplier but by way of a staff theft, then that amount would be tax deductible. He provided no authority for this submission, but of course it relies on a finding by us that there was staff theft.

14. There was a great deal of discussion about this at the hearing. The appellant gave evidence and made submissions concerning her justification for arriving at this conclusion and for informing the police of her suspicions. She did this in the spirit of seeking to assist both HMRC and the Tribunal in arriving at the truth of how the discrepancies in the numbers might have arisen. The appellant recognised that much of what she was saying was speculation, and of course Mrs Davies asked us to treat her evidence as such and not as statements of fact. And we have done this.

15. To determine this appeal, we do not have to come to a conclusion regarding the issue of staff theft. But we have to say that if we had needed to reach such a conclusion, there was nowhere near sufficient evidence either in the documents or by way of oral testimony for us to say that, on the balance of probabilities, there had been staff theft.

16. As we mentioned at the beginning of this Decision the reason why the appellant over claimed deductions arising from purchases from Catering Connect may well be relevant if HMRC seeks to impose penalties on her for submitting an inaccurate return (which they have not done thus far). But for the purposes of this appeal against the assessment, all that matters is the amount actually paid to Catering Connect for the supplies made by them to the appellant's business in 2015/2016. We have concluded that this amount is £9,215.08.

DECISION

17. For the foregoing reasons we dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

18. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 17 OCTOBER 2020