[2021] UKFTT 0098 (TC)

TC08081

CAPITAL GAINS TAX – whether under assessment - inaccuracy penalty

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/04500

BETWEEN

BABATUNDE IGINLA **Appellant**

-and-

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

TRIBUNAL: JUDGE DAVID BEDENHAM

The hearing took place on 15 February 2021. With the consent of the parties, the form of the hearing was video with Mr Iginla and Mr Marks on behalf of HMRC attending through the Tribunal video platform. A face to face hearing was not held because of the ongoing Covid 19 pandemic and social distancing guidance.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

The Appellant appeared in person

Mr Paul Marks, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Between 2003 and 2015, the Appellant was the owner of a residential property at 447B Fulham Palace Road, London, SW6 6SU ("the Property").

2. In the Appellant's 2015/16 tax return, he declared a chargeable gain arising from the sale of the Property. In calculating the amount of the chargeable gain, the Appellant included as a deduction the sum of £96,350 said to have been paid to a contractor, JAJ-Smith Housing Association Ltd ("JAJ"), for refurbishment of the Property.

3. HMRC opened an enquiry into the Appellant's 2015/16 tax return. During the course of that enquiry, the Appellant (acting through his accountants) and HMRC were able to settle a number of other matters (relating to other deductions and reliefs) but could not reach agreement in relation to the refurbishment costs. The Appellant maintained that he was entitled to the full £96,350 as a deduction whereas HMRC formed the view that the Appellant was entitled to deduct no more than £23,500 for the claimed refurbishments.

4. HMRC issued a closure notice to the Appellant and increased the chargeable gain from the declared sum of £217,753 to £362,081 and increased the Capital Gains Tax due from £54,684.34 (as declared) to £98,204.18 (a difference of £43,519.84). This increase took into account the other matters/corrections that had been agreed between HMRC and the Appellant as well as HMRC's view that the Appellant was entitled to deduct only £23,500 for the claimed refurbishments.

5. HMRC subsequently issued the Appellant with a penalty in the sum of £22,085.89 pursuant to Schedule 24 of the Finance Act 2007. The penalty was issued on the basis that the Appellant had, in his 2015/16 tax return, deliberately understated the chargeable gain and the Capital Gains Tax due.

6. Before me, HMRC's position was:

   (1) There had been an error in the calculations made by HMRC in relation to the additional Capital Gains Tax due. This error has arisen because HMRC had failed to take into account a deduction of £9610 that had been agreed between the parties. Accordingly, the additional Capital Gains Tax due was £40,829 (not £43,519.84 as previously stated) – although this was subject to HMRC's revised position in relation to the JAJ refurbishments costs (see below).

   (2) The Appellant is not entitled to *any* deduction in relation to the refurbishment work said to have been undertaken by JAJ because that work did not in fact take place.

   (3) In relation to the penalty, there were a number of errors/corrections:

      (a) The penalty should only have been imposed on the deliberate basis in relation to the inaccuracy arising from the Appellant's deduction of the JAJ refurbishment costs. Further, the reduction given for disclosure in relation to that aspect of the penalty should have been 70% rather than 55% resulting in a penalty of £9281.09.

      (b) The penalty for the other inaccuracies (which were resolved by agreement between the parties) should only have been applied on the careless basis and the full reduction should have been given for disclosure in relation to that aspect of the penalty resulting in a penalty of £3394.48.

7. The Appellant's position before me was that the JAJ-Smith had undertaken the claimed refurbishment work for which he (or rather his father on his behalf) had paid £96,350.

Therefore this entire sum should have been allowed as a deduction when calculating the chargeable gain and any additional Capital Gains Tax liability. There was, then, no inaccuracy (less still a deliberate inaccuracy) in relation to the JAJ refurbishment costs. In relation to the other matters/corrections that had been agreed between the parties, the Appellant said his accountant had prepared the return and therefore the Appellant had assumed that the reliefs/deductions on the return were properly allowable.

THE LAW

8. Section 1 (1) of the Taxation of Chargeable Gains Act 1992 ("TCGA 1992") at all material times provided:

> "Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets."

9. Section 38 TCGA 1992 at all material times provided:

> "Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—
>
> (a)the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
>
> (b)the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
>
> (c)the incidental costs to him of making the disposal.
>
> (2)For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty or stamp duty land tax) together—
>
> (a)in the case of the acquisition of an asset, with costs of advertising to find a seller, and
>
> (b)in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act."

10. Section 28A of the Taxes Management Act 1970 ("TMA 1970") at all material times provided:

> "(1) This section applies in relation to an enquiry under section 9A(1) of this Act.

(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "partial closure notice") that the officer has completed his enquiries into that matter.

(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "final closure notice")—

a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or

(b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

(2) A partial or final closure notice must state the officer's conclusions and–

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return required to give effect to his conclusions.

(3) A partial or final closure notice takes effect when it is issued."

11. Section 50 TMA 1970 at all material times provided:

(6) If, on an appeal notified to the tribunal, the tribunal decides—

(a) that the appellant is overcharged by a self-assessment;

(b) that any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal notified to the tribunal, the tribunal decides —

(a) that the appellant is undercharged to tax by a self-assessment;

(b) that any amounts contained in a partnership statement are insufficient; or

(c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.

(7A) If, on an appeal notified to the tribunal, the tribunal decides that a claim or election which was the subject of a decision contained in a closure notice under section 28A of this Act should have been allowed or disallowed to an extent different from that specified in the notice, the claim or election shall be allowed or disallowed accordingly to the extent that the tribunal decides is appropriate, but otherwise the decision in the notice shall stand good.

(8) Where, on an appeal notified to the tribunal against an assessment (other than a self-assessment) which—

(a) assesses an amount which is chargeable to tax, and

(b) charges tax on the amount assessed,

the tribunal decides as mentioned in subsection (6) or (7) above, the tribunal may, unless the circumstances of the case otherwise require, reduce or, as the

> case may be, increase only the amount assessed; and where any appeal notified to the tribunal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly."

12. Paragraph 1 of Schedule 24 FA 2007 provides:

> "(1) A penalty is payable by a person (P) where–
>
> (a) P gives HMRC a document of a kind listed in the Table below, and
>
> (b) Conditions 1 and 2 are satisfied.
>
> (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to–
>
> (a) an understatement of a liability to tax,
>
> (b) a false or inflated statement of a loss, or
>
> (c) a false or inflated claim to repayment of tax.
>
> (3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.
>
> (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy."

13. The documents listed in the table referred to in paragraph 1 include "income tax or capital gains tax return".

14. Paragraph 3 of Schedule 24 FA 2007 provides:

> "(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is–
>
> 'careless' if the inaccuracy is due to failure by P to take reasonable care,
>
> 'deliberate but not concealed' if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
>
> 'deliberate and concealed' if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure)"

15. Paragraph 4 of Schedule 24 FA 2007 sets out the standard amounts of penalty for the behaviours that are the subject of the Schedule 24 regime. For a "category 1" inaccuracy (which applies in the present case) the penalty payable (subject to any reduction for disclosure) is: for a careless inaccuracy 30% of the potential lost revenue, for a deliberate but not concealed inaccuracy 70% of the potential lost revenue, and for a deliberate and concealed inaccuracy 100% of the potential lost revenue.

16. Paragraph 5 of Schedule 24 FA 2007 provides:

> "The potential lost revenue" in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment."

17. Paragraphs 9 and 10 of Schedule 24 FA 2007 provide for reductions in the penalty where a person provides disclosure in relation to an inaccuracy. Paragraph 9(2) distinguishes between disclosure that is "unprompted" and "prompted". In a prompted disclosure case, a penalty can be reduced from 30% down to 15%.

18. Paragraph 11 of Schedule 24 FA 2007 provides that a penalty can be further reduced in "special circumstances". Paragraph 17 provides that the Tribunal's power to substitute its own decision for that of HMRC may include a reduction on account of special circumstances but this reduction may only differ from that applied by HMRC if the Tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed when considered in the light of the principles applicable in judicial review proceedings.

19. Paragraph 14 of Schedule 24 FA 2007 provides HMRC with a power to suspend all or part of a penalty for a careless inaccuracy, but only if this would help a person to avoid becoming liable to similar such penalties in future.

20. Paragraph 15 of Schedule 24 FA 2007 provide a right of appeal to the Tribunal in relation to the decision to issue a penalty, the amount of the penalty and the decision not to suspend a penalty (or to suspend on conditions).

21. Paragraph 18 of Schedule 24 FA 2007 provides:

> "18(1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.
>
> 18(2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.
>
> 18(3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid the inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2)."

22. It is for HMRC to prove that the Appellant is liable to a penalty (and the amount of the penalty). It is for the Appellant to establish "reasonable care" for the purposes of paragraph 18(3).

23. In *Auxilium Project Management v HMRC* [2016] UKFTT 249 (TC), the Tribunal held:

> "a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. The question is not whether a reasonable taxpayer might have made the same error or even whether this taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time.
>
> The test of deliberate inaccuracy should be contrasted with that of careless inaccuracy. A careless inaccuracy occurs due to the failure by the taxpayer to take reasonable care (see paragraph 3(1)(a) of Schedule 24 Finance Act 2007 and *Harding v HMRC* [2013] UKUT 575 (TCC) at [37])."

I agree that this is the correct approach when considering whether conduct is deliberate for the purpose of a schedule 24 penalty.

Evidence

24. The documents before me showed the chronology of relevant events to be as follows:

(1) The Appellant's tax return for the year ended 5 April 2016 was submitted on 20 January 2017.

(2) On 5 July 2017, Mr Ashok Sardana, the decision-making officer, notified the Appellant that he has opened a s9A enquiry into the Appellant's tax return for the year ended 5 April 2016.

(3) On 9 August 2017, the Appellant's accountants provided various documents and information requested by Mr Sardana. The Appellant's accountants also explained why various reliefs and deductions had been claimed. The documentation disclosed included an (undated) invoice on JAJ letterhead for £96,350, a bill of quantities for the claimed refurbishment works and a letter dated 25 August 2003 on JAJ letterhead which stated:

> "PAYMENT FOR WORKS AT 447B FULHAM PALACE ROAD LONDON SW6 6SU
>
> The above subject refers please.
>
> This is to acknowledge the receipt of the sum of N18,980,950 (Eighteen Million Nine Hundred and Eighty Thousand Nine Hundred and Fifty Naira Only) into our Trade Bank Plc Account in Nigeria from Mr Teopheeq Iginla on the 22nd of August 2003 based on your instructions.
>
> As agreed, this payment shall be the full and final sum for the renovation works at the above address.
>
> As you are aware, preliminary works commenced on August 18th 2003 and all works shall be completed on or before the 12th of September 2003.
>
> While thanking you for this opportunity to work with you, we assure you of our commitment to deliver quality service at the expected date."

(4) On 18 August 2017, Mr Sardana asked the Appellant's accountants to provide further information and documentation in relation to a number of the reliefs and deductions claimed. In relation to the JAJ refurbishment costs, Mr Sardana asked a number of questions and asked for further proof of payment of the JAJ invoice (e.g. bank statements).

(5) On 18 September 2017, the Appellant's accountants responded to Mr Sardana's letter. In relation to the reliefs and deductions they explained why they considered that those reliefs/deductions had been properly claimed. In relation to the JAJ refurbishment costs, the Appellant's accountants stated:

(a) The works conducted by JAJ did not require planning permission.

(b) Payment to JAJ was made in Nigeria "because that was the only place at that point in time where additional finance could be sourced because the mortgagor could not extend any further loan for such enhancement. Additionally, the contractor was willing to accept payment in Nigeria at a pre-agreed exchange rate."

(c) Evidence of payment had already been provided (in the form of the letter of 25 August 2003).

(d) The payment was made to JAJ by the Appellant's father.

(e) "a bank statement is a confidential document which belongs to the account holder and in this instance [the Appellant] was not privy."

(f) The Appellant's father is now deceased and "the payment is yet to be made (reimbursed) to his Estate as the administrators are resolving many post-testamentary issues"

(g) The Appellant has a "purely business (arm's length)" relationship with JAJ.

(h) "No formal contract of work was executed for the contract. The negotiation for the contract was verbal and the evidence of the contract is represented by the invoice and acknowledgment of payment by the Contractor,"

(6) On 16 October 2017, Mr Sardana responded to the Appellant's accountant asking for further information and expressing his view that several of the deductions and reliefs claimed were not properly claimable. In relation to the deduction relating to the JAJ work, Mr Sardana stated:

> "I need to see documentary supporting evidence of this payment of £96350 or its equivalent in Naira having been made to the contractor in the form of bank statement before I can consider allowing this expense in full."

(7) On 13 November 2017, the Appellant's accountants wrote to Mr Sardana. In that letter the accountants challenged Mr Sardana's views that several of the deductions and reliefs claimed were not properly claimable. In relation to the JAJ work, the accountants stated:

> "Your request for a bank statement of a third party is difficult to understand. The two parties (the contractor and the lender) have both expired. The transactions happened over 10 years ago. We have presented the core evidence which is the acknowledgment by the contractor that money was received by us [sic]. Kindly advise on what procedure you think we should legally explore to compel these two parties (who are no longer in existence) to provide us with their bank statements. We have presented the only evidence in our possession that indicated payment was received from us."

(8) Between December 2017 and January 2018, Mr Sardana and the Appellant's accountants continued to correspond in relation to the various reliefs and deductions. In relation to the JAJ work, there was no progression. The Appellant's accountants continued to state that there was no further documentation that could be provided.

(9) On 28 February 2018, the Appellant (rather than his accountants) wrote to Mr Sardana. In relation to the JAJ work, the Appellant stated:

> "We are really worried and disturbed about your understanding of the evidence…your continued reference to 'an invoice on its own is not proof that work has been paid for' unequivocally demonstrates the fact that you either did not understand that an acknowledgement of receipt of payment by the UK-based Contractor-JAJ Smith (which was provided to you, and which we are providing herewith again) is the required evidence or you intentionally refused to acknowledge the evidence.
>
> Once again, and for the sake of clarity, we do not have any further evidence of payment to provide you other than the acknowledgment of receipt by the contractor which is already in your possession. I do not know under what privacy law you would want a borrower to be requesting the lender to provide his financial records.
>
> If you want to reach out to the Executors of the Estate of the deceased to obtain their Bank Statements based on the power vested in you by HMRC enabling laws, we can only wish you good luck…"

25. In March to May 2018 there was some further limited correspondence between the parties. There was no meaningful progression of matters in relation to the JAJ work.

26. On 18 July 2018 (forwarded under cover of letter of 23 July 2018), the Appellant wrote to Mr Sardana stating that he "strongly and vehemently challenge[d]" Mr Sardana's approach to the JAJ work deduction. The Appellant went on to state that he had received legal advice that Mr Sardana's "request for this irrelevant evidence is inappropriate and unlawful particularly after we have provided you the options to deploy the powers granted you by HMRC to subpoena the information you required from these third parties…". The letter went on to state that the Appellant felt harassed by Mr Sardana's conduct.

27. On or about 1 August 2018, Mr Sardana asked David Drane of the Valuation Office Agency ("VOA") to consider information and photographs relating to the Property and to provide an opinion as to the value of any refurbishment works.

28. On 14 August 2018, Mr Sardana wrote to the Appellant's accountants stating that he was sorry if the Appellant felt harassed and recognised that tax enquiries can be daunting and stressful. Mr Sardana went on to state that the main point that continued to be in issue was the JAJ works.

29. On 5 September 2018, Mr Drane of the VOA notified Mr Sardana that his estimate of the value of refurbishment works done to the Property was £23,500 (inclusive of VAT).

30. On 24 September 2018, the Appellant made a complaint (to the HMRC complaints team) about Mr Sardana's conduct.

31. On 1 November 2018, Mr Sardana wrote to the Appellant in response to the complaint (the complaint having been shared with him by the complaints team). In that letter, Mr Sardana also stated:

> "As we are at an impasse in regards the refurbishment costs, unless you are able to provide me with further supporting evidence by say 7 December 2018, I will consider issuing my decision letter to restrict the refurbishment expense to the District Valuer's valuation and the other adjustments that have already been agreed. You of course have the right to appeal and take the matter before the Tribunal."

32. On 21 November 2018, the Appellant responded to Mr Sardana's letter of 1 November 2018. The Appellant expressed is dissatisfaction with Mr Sardana (rather than the HMRC complaints team) replying to him.

33. On 28 December 2018, HMRC's complaints team responded to the Appellants letter of 21 November 2018. The complaints team agreed that the initial complaint should have been dealt with by someone other than Mr Sardana. There was further correspondence in relation to the Appellant's complaints about Mr Sardana in the period January 2019 – March 2019. Ultimately the complaints team determined that Mr Sardana had behaved correctly and as would be expected by an officer conducting an enquiry.

34. On 28 February 2019, Mr Sardana wrote to the Appellant as follows:

> "Your agent…has not provided me with any additional information that changes my view I put to you in my letter of 1 November 2018.
>
> …with no supporting evidence having been provided, it is my view that you have submitted an inaccurate return for the period ending 5 April 2016, and as a consequence your tax liability has been understated. As we are at an impasse in regards to the refurbishment costs, I am issuing you with my decision letter which restricts this expense…to £23,500…based on the District Valuer's valuation. The other adjustments are based on what has been agreed with your agent.

> The additional capital gains tax due would be £43,519. I enclose details of the revised capital gains computation.
>
> …
>
> I am now writing to you that if you do not provide me with any new information, which changes my view, within 30 days, I intend to issue the following notice:
>
> A closure notice to amend your 2016 Return based on my computation enclosed."

35. On 28 February 2019, Mr Sardana issued to the Appellant a document said to be a "final closure notice pursuant to s28A [TMA 1970]". That closure notice increased the chargeable gain from the declared sum of £217,753 to £362,081 and increased the Capital Gains Tax due from £54,684.34 (as declared) to £98,204.18 (a difference of £43,519.84). The Appellant disputes receiving this document and challenges whether it was in fact issued on 28 February 2019.

36. On 4 March 2019, Mr Sardana sent to the Appellant a penalty explanation letter notifying him that HMRC intended to charge a penalty in the sum of £22,085. That penalty was calculated on a deliberate (but not concealed) and prompted basis giving a penalty range of 35% to 70%. The level of reduction given for disclosure was 55% and the proposed penalty was 50.75% of the PLR

37. On 4 April 2018, the Appellant wrote to Mr Sardana enclosing (again) the three documents relied on in relation to the JAJ work deduction, being:

(1) The undated invoice for £96,350

(2) The bill of quantities

(3) The 25 August 2003 letter.

38. On 10 April 2019, Mr Sardana wrote to the Appellant and stated that no further supporting documentation had been provided in relation to the JAJ work and therefore he was "not treating [the Appellant's] letter as an appeal" and would "shortly be amending your Tax Return for the year ending 5 April 2016 based on the computations sent with my letter of 28 February and a Penalty determination based on the explanation sent with my letter of 4 March 2019."

39. On 20 May 2019, Mr Sardana issued the Appellant with a notice of penalty assessment in the sum of £22,085.89.

40. On 21 May 2019, Mr Sardana wrote to the Appellant in the following terms:

> "I have now completed my check of your Self Assessment tax return for the year [ended 5 April 2016]. This letter is a final closure notice issued under Section 28A (1B) & (2) Taxes Management Act 1970.
>
> I have sent a copy of this letter to your tax adviser.
>
> My decision
>
> Capital gain understated
>
> I have amended your tax return in line with my decision:
>
> - It previously showed you were due to pay £54,684.34 tax
> - It now shows that you were due to pay £98.204.18 tax
> - The difference is £43, 519.84

…"

The Appellant disputes receiving this document.

41. On 12 June 2019, the Appellant wrote to Mr Sardana stating that he intended to appeal against Mr Sardana's decision and therefore would like to be "provided with the tax and penalty notices, the first of which (the tax notice) I was not provided with." The Appellant sent a further letter in similar terms on 28 June 2019.

42. On 2 July 2019, Mr Sardana responded to the Appellant and stated that the enquiry was now closed.

43. On 8 July 2019, the Appellant's accountants stated that they were "alarmed and concerned" that Mr Sardana had stated that the enquiry was now closed in circumstances where "we have received the penalty notice [but]...are yet to receive a tax notice".

44. On 9 July 2019, Mr Sardana wrote to the Appellant stating:

> "I wrote to you on 28 February 2019 with my decision letter which gave you a breakdown of the CG computation…I also sent along with it a closure letter of the same date advising you that I will be amending your Tax Return based on these figures…the enquiry Return was amended on 15 May 2019…"

45. On 14 July 2019, the Appellant made a fresh complaint about Mr Sardana. That complaint alleged that Mr Sardana had not issued a closure notice on 28 February 2019 but had later claimed to have done so "to cover his tracks" because he "discovered that he had committed a serious blunder by issuing a penalty notice without a final CGT assessment notice…".

46. On 5 August 2019, the Appellant's complaint was not upheld by the HMRC Complaints Team. The complaints team stated that the closure notice was issued in 28 February 2019 and that there was "no validity issues nor any reason to doubt that we sent it on the date in question."

47. The Appellant escalated his complaint to the Adjudicator's Office. On 7 November 2019, the Adjudicator's Office, having reviewed the relevant file properties, rejected the Appellant's complaint that the closure notice had been 'backdated'.

48. Mr Sardana provided a witness statement and gave evidence before me. In summary he

(1) confirmed the chronology of events set out above.

(2) stated that the Appellant had purchased the Property in June 2003 under the Right to Buy Scheme and improvements that the Appellant has carried out to the Property whilst still a tenant were taken into account when setting the purchase price.

(3) highlighted that the 25 August 2003 letter stated that the refurbishment works would commence on 18 August 2003 and complete on 12 September 2003.

(4) stated that the rental accounts submitted by the Appellant demonstrated that the Property was rented out shortly after the claimed refurbishment works were completed.

(5) confirmed that on 28 February 2019 he issued his decision/cover letter and a closure notice, and these were sent to the Appellant and to the Appellant's accountants.

(6) accepted that there cannot be two final closure notices in relation to the same enquiry and therefore the 21 May 2019 letter was not (despite its terms) a closure notice (as the closure notice had already been issued on 28 February 2019).

(7) stated that the Appellant has provided insufficient evidence in relation to the claimed refurbishment work by JAJ and therefore a deduction in a lesser sum (£23,500) had been allowed based on the assessment conducted by Mr Drane.

(8) accepted that the freeholder had, in 2011, conducted major works to which the Appellant has contributed £9610 which contribution was an allowable deduction and had been omitted from HMRC's calculations in error.

(9) said that he had had located JAJ on Companies House and found that it was incorporated on 17 April 2003 but had not subsequently filed any accounts and had been dissolved. Mr Sardana could not identify the date of dissolution.

(10) stated that the penalty had been issued on the deliberate basis because the evidence indicated that the works had not been carried out to the extent claimed and the Appellant would have known this. The inaccuracy only came to light as a result of the s9A enquiry so this was a "prompted" case.

(11) acknowledged that the deliberate penalty should only have been applied to the deduction relating to the claimed JAJ work. The penalty in relation to the other deductions and reliefs that were incorrectly claimed should have been imposed on the careless basis.

(12) acknowledged that the reduction to the penalty for disclosure in relation to the claimed JAJ work should have been 70% rather than 55%. The full reduction for disclosure should have been applied in relation to the other inaccuracies.

(13) stated that there were no special circumstances justifying any further reduction in the penalty.

(14) stated that there was no basis for suspending the penalty as this was a "one off" deduction against a capital gain such that no conditions could be put in place to ensure this type of error did not occur in future.

49. Mr Drane provided a witness statement and gave evidence before me. In summary he:

(1) is a Chartered Surveyor and registered valuer but was not an expert building surveyor.

(2) has worked for the VOA for 30 years.

(3) made clear that whilst employed by the VOA, was aware of his obligations as an expert witness.

(4) confirmed he had not attended at and conducted an inspection of the Property.

(5) stated that VOA inspected the Property sometime in the period 29 May 2002 and 30 July 2002 in connection with a Right to Buy valuation appeal made by the Appellant. Four photographs of the Property were taken during that inspection. Those photographs were exhibited.

(6) said he had identified on the Rightmove website photographs used to market the Property for sale in 2015. Those photographs were exhibited.

(7) noted that the VOA database included a note stating "new kitchen/bathroom/decoration by tenant". This note was included because it was relevant to the Right to Buy valuation appeal because improvements carried out by a tenant are excluded when valuing a property for the purchase of the Right to Buy scheme.

(8) considered and compared the VOA and Rightmove photographs and formed the view that very little had changed at the Property between 2002 and 2015.

(9) opined that the photographs of the bathroom indicated that the changes were limited - being removal of the bath, installation of a shower and some rudimentary re-tiling.

(10) opined that the photographs of the kitchen in 2015 indicated that the kitchen was likely fitted in the 1980s.

(11) opined that if the work undertaken by JAJ had been carried out, an estimate for the cost of that work was £23500.

(12) acknowledged that a referral document he had received from Mr Sardana had referred to the Property as having 3 rather than 4 bedrooms and was a freehold but said that did not alter his conclusions as he was concerned with the costs of work and overall square footage as opposed to the number of bedrooms or tenure.

50. Mr Peter Tompkinson provided a witness statement and expert report, and gave evidence before me. In summary he:

(1) has worked as a Buildings Surveyor since 1989.

(2) was, in 1991, elected as a member of the Royal Institution of Chartered Surveyors.

(3) has worked for the VOA since 2017.

(4) made clear that whilst employed by the VOA, he was aware of his obligations as an expert witness.

(5) confirmed he had not attended at and conducted an inspection of the property.

(6) stated that he had relied on photographs and floorplans available from the VOA system and the Rightmove website (as referred to by Mr Drane).

(7) opined that he doubted that the amount of work said to have been conducted by JAJ could have been properly executed in the claimed 4 week period due to the number of different tradesmen that it would be necessary to have onsite at various points.

(8) stated that if the work said to have been conducted by JAJ had been carried out the likely cost would have been more like £41,087 rather than the £96,350 claimed (and broke this down across the items of work referred to on the JAJ invoice).

(9) in relation to the items of work specified on the JAJ invoice, expressed the following opinions:

(a) Item 1 (strip out entire flat and remove all debris from site): "It is likely that some work was carried out within the flat after July 2003. I would consider it unlikely that the whole of the flat would need to be stripped out…significant defects to internal finishes would have been highlighted in the Right to Buy valuation and this is not evident in the photographic evidence of the VOA valuer.." Maximum cost for this item £3406.

(b) Item 2 (plaster boarding and plastering including all materials and labour): "it is unlikely that all the work described was carried out within the flat after July 2003…there is no evidence to suggest that this work was carried out, similarly, I cannot say that it has not been carried out." Maximum cost for this item £5601.

(c) Item 3 (carpentry including materials and labour): "it the tribunal decides that the flat was re-plaster boarded throughout, then the internal joinery items would also have been replaced…If the Tribunal considers that only new laminate floors were laid throughout the property an allowance can be made of £5,155.80…". Maximum cost for this item £6624.

(d) Item 4 (decorating including materials and labour): "I think it reasonable and likely that all the work described was carried out within the flat after July 2003". Maximum cost for this item £2101.

(e) Item 5 (electrical installation materials and labour): "unlikely based on photographic evidence…there is no evidence to suggest that this work was carried out, similarly, I cannot say that it has not been carried out however the Rightmove photographs do not show any LED down lighters as specified in the quotation/Bill of Quantities" Maximum cost for this item £7078.

(f) Item 6 (central heating labour and materials inc boiler): "unlikely based on photographic evidence...there is no evidence to suggest the work was carried out…the extent of re plumbing is a matter for further evidence. However, the boiler shown in the Rightmove photographs of 2015/16 appears dated. I cannot be sure but would estimate that the boiler dates from c.1985. Further, the Appellant's quotation/Bill of Quantities allows for 3 new radiators in the reception room. These are not shown in the 2015 Rightmove photographs although the gas fire in the reception room has been removed." Maximum cost for this item £5503.

(g) Items 7 and 8 (Kitchen units, worktop, installation, labour and kitchen appliances): "in my opinion this kitchen style dates from the mid to late 1990s and the boiler also dates from this period or earlier. There are no photographs on the VOA database of the kitchen in 2002. It is possible that this style of kitchen and boiler could have been fitted in 2003 however." Maximum cost for these items £4091.

(h) Items 9 and 10 (Bathroom First Fix, materials, labour and bathroom fitting labour and materials: "I do not believe that the bathroom was refurbished completely. The photographic evidence suggests that the only work carried out was the removal of the bath and handrails installed in its place with presumably a shower tray". Maximum cost for these items £250 (although in oral evidence this was revised to £600 to include installation of a shower).

(i) Item 11 (scaffolding): "scaffolding would only have been necessary to re-decorate external joinery. Under the terms of the lease dated 14th July 2003, the Landlord covenants…to carry out external decoration. It is unlikely that the lessee would carry out this work therefore." Maximum cost for this item £1627.45.

(j) Item 12 (decorating external woodwork 17 units): "Under the terms of the lease dated 14th July 2003, the Landlord covenants…to carry out external decoration. It is unlikely that the lessee would carry out this work therefore." Maximum cost for this item £92.84.

51. Despite initially asserting that JAJ had never existed, HMRC withdrew that contention when Mr Sardana confirmed in evidence that he had located JAJ on Companies House. HMRC adduced evidence that there was no record of JAJ ever having been registered for VAT.

52. The Appellant provided a witness statement and gave evidence before me. In summary he stated:

(1) he acted on the advice of his accountant when claiming the reliefs/deductions. The only issue now in dispute was the deduction relating to the JAJ works.

(2) the Appellant and his then wife moved into the Property as local authority tenants in November 2001.

(3) in 2002, the Appellant contacted the local authority in relation to purchasing the Property which purchase was completed in 2003.

(4) prior to purchasing the Property no substantial work had been done to it by the Appellant/his wife save that a new oven and new bath had been installed which might be why the VOA had a note that there had been some work done while the Appellant was still a tenant.

(5) the Appellant asked his father to assist with payment of the refurbishment costs.

(6) the Appellant wanted a contractor that would accept payment in Nigeria. He was introduced to JAJ by a friend.

(7) he called JAJ's office and spoke with "Rosemary".

(8) Rosemary acted as the contact point albeit the work was conducted by a team of people with whom the Appellant did not deal. The Appellant's wife liaised with Rosemary and explained the work that she wanted conducting.

(9) JAJ initially said the works would take 6-8 weeks but the appellant wanted it don't more quickly and JAJ said they could do the work in 3-4 weeks but it would be more expensive.

(10) the Appellant and his then wife moved out of the Property to allow the work to take place.

(11) moving out of the Property put a strain on the relationship between the Appellant and his wife so they decided to rent the Property out rather than move back into it.

(12) the Property was rented out from January 2004.

(13) the Appellant does not think he has any photographs of what the Property looked like prior to the JAJ works.

(14) prior to JAJ putting down new laminate flooring, the Property was carpeted.

(15) prior to JAJ putting in the new kitchen, the kitchen was a "basic council property kitchen".

(16) During the refurbishment work, someone from the local authority came to look at the work to ensure that no work needing permission was being conducted. Someone from JAJ called the Appellant to tell him that the local authority had attended the Property and the Appellant spoke over the phone with the person from the local authority.

(17) proof of the JAJ works had been provided in the form of the invoice, the letter confirming receipt of payment and the BOQ.

(18) he had not noticed and did not know why the BOQ total did not match the JAJ invoice total. HMRC should have asked JAJ about this discrepancy and asked JAJ to attend the Tribunal hearing.

(19) the "after" photographs obtained from Rightmove were actually taken in 2014.

(20) in relation to the bathroom, JAJ had to remove the bath, make good the floor and wall tiles and then install a disabled shower. Mr Tompkinson was wrong to say this would only have cost £600. JAJ charged £7700.

(21) when asked why the Rightmove photographs taken in 2014 did now show the LED downlights referred to on the BOQ, he stated that JAJ conducted the work and he was happy with it. The Appellant then stated that some of the work undertaken by JAJ had to be removed as a condition of renting the Property out via a housing association – this included removing dimmer switches and a "fancy light" in the reception room.

(22) when asked whether in 2011 the Freeholder had undertaken the same work as apparently referred to as items 11 and 12 on the JAJ invoice, the Appellant stated "you would need to ask the council what they did."

(23) he did not ask any other contractors to quote for the work.

(24) JAJ quoted £96,350 and that is what he asked his father to pay to them.

(25) JAJ gave the Appellant their bank details on a piece of paper. The Appellant passed those bank details to his father over the telephone.

(26) "payment for the refurbishment work was made directly, by cash, to [JAJ] by my deceased father…to the [JAJ's] Nigerian Naira denominated account".

(27) The Appellant does not know whether his father withdrew the cash from his own bank account.

(28) he did not receive the closure notice dated 28 February 2019 until July 2019. He did receive the decision letter (also dated 28 February 2019) in March 2019.

(29) he was told by an HMRC representative during a call on 1 July 2019 that the system was showing a "draft final tax notice dated May 21 2019 which was notated on the system as 'draft yet to be issued'".

(30) he believed that Mr Sardana had not issued a closure notice on 28 February 2019 and had instead, sometime after 1 July 2019, backdated that document.

53. After the hearing, the Appellant emailed to the Tribunal a document titled "post-mortem review" which was a marked up copy of the BOQ. The cover email stated as follows:

> "Following the court proceedings on Monday, February 15, 2020 regarding the subject matter wherein issues relating to inconsistencies between the Bill of Quantities (BOQ) and the invoice issued by JAJ Smith Housing Association Ltd (the Contractors) which the Appellant pleaded as evidence of refurbishment works performed, I commissioned an Accountant to perform a post-mortem review of the figures and to identify the source of the discrepancies.
>
> The Accountant, after a quick (not in-depth review because of limited information on the documents) and cursory review identified the following as part of the reasons for the discrepancies:
>
> Some of the expenses observed on the second page of the BOQ were excluded from the total as follows:
>
> 1. Decoration including materials and Labour figure (Item 1 on the attachment) was omitted in the calculations resulting in £7K difference.
>
> 2. Electrical Installation resulting in £6K difference. (Item 2 on the attachment)

> 3. Central heating Labour/Materials in £2K difference. (Item 3 on the attachment)
>
> These were the easily identifiable and patent causes of difference in the figures. As mentioned during the trial, the Contractor (JAJ Smith), who the Respondents cleverly avoided summoning as witness by claiming it was not a UK-registered Company, would have easily thrown more light on this specific issue.
>
> I hope this bring a bit more clarity to this issue as it was a surprise to me at the trial because I did not previously pay any attention to this as my ex-wife was the one majorly responsible for agreeing what work was to be carried out while I was just basically responsible for sourcing the funds."

54. The Appellant's former wife attended part of the hearing as an observer but did not provide a witness statement or otherwise give evidence to the Tribunal.

SUBMISSIONS

55. The Appellant submitted:

(1) the VOA is not independent of HMRC and the evidence provided by Mr Drane and Mr Tompkinson should not be relied on for that reason and because neither had visited the property.

(2) the final closure notice dated 28 February 2019 was not received by him until July 2019 and was in fact issued (and backdated) by Mr Sardana sometime in July 2019.

(3) JAJ undertook the work as claimed and were paid £96, 350. This cost is, then, an allowable deduction. Further, as there was no inaccuracy in relation to the JAJ deduction, there is no liability to a penalty.

(4) in relation to the other inaccuracies (which were corrected by agreement), the Appellant had relied on his accountant.

56. HMRC submitted:

(1) the closure notice was issued on 28 February 2019.

(2) if the Tribunal were to find that the closure notice was not issued on 28 February 2019 it was clearly issued by no later than July 2019 (when the Appellant accepts he received the closure notice). The consequence of this would be that the penalty issued on 20 May 2019 would have been improperly issued as "if there was no assessment in place there can be no 'potential lost revenue'".

(3) there are various errors that need to be corrected (see paragraphs 6(1) and (3) above).

(4) the Tribunal should increase the CGT assessment because in fact no refurbishment work was conducted at the Property. In particular:

(a) no photographs of the work being done have been provided.

(b) no warranties or other safety certificates relating to the work have been provided (despite the claimed work including provision of kitchen appliances and electrical installation).

(c) the BOQ provides a "total" figure of £72, 545.29 whereas the invoice amount was £96,350.

(d) There are numerous discrepancies between the BOQ and the invoice, such as:

(i) Item 10 on the JAJ invoice is "Bathroom Final Fix inc Tiling, Labour and Materials - £5,503.59" and yet there was no corresponding entry on the BOQ.

(ii) Item 4 on the JAJ invoice is "Decorating including materials and Labour - £96,350" and yet the BOQ entries for "paint" and the labour costs attributed to "paint" total less than £2500.

(e) The photographs of the Property before and after the claimed refurbishment show very little had changed at the property. By way of example:

(i) The BOQ includes an entry for "LED Down Lights" in the reception room and yet the "after" photographs show no such down lights.

(ii) Photographs of the bathroom show very limited changes and certainly not work to the sum of £7,700 as claimed.

(5) In 2011, the Freeholder conducted major works at the Property which included "scaffolding, overhaul windows, overhaul doors and external redecorations" at a cost of £10,805. This work was the same as the work included as items 11 and 12 on the JAJ invoice ("Scaffolding and Decorating External Woodwork 17 units") for which £7800 was invoiced. Therefore, even if JAJ did conduct the invoiced work in 2003 (which HMRC dispute), the same external work was done again by the Freeholder in 2011. Therefore, the Appellant cannot deduct the costs of the earlier (JAJ) work as that expenditure was no longer "reflected in the state or nature of the asset at the time of the disposal". HMRC now agrees that the Appellant's contribution of £9610 to the major work costs undertaken by the Freeholder is an allowable deduction (see paragraph 6(a) above).

(6) The documents submitted by the Appellant in support of the refurbishment work (see paragraph 24(3) above) are either false or do not represent the work actually carried out.

(7) If the Tribunal is satisfied that some refurbishment work was conducted but by someone other than JAJ, a deduction in the amount of those refurbishment costs should be allowed.

(8) The Appellant knew that the JAJ invoice did not represent the true cost of the refurbishment work carried out and yet claimed the full invoice costs as a deduction.

(9) In relation to the other inaccuracies (which were corrected by agreement), the Appellant did not take due care and is therefore liable to a penalty on the careless basis.

DECISION

57. I accept the chronology of events as set out at paragraphs 24-47 above. That chronology is supported by the documentary evidence/correspondence that was before me.

58. In relation to the witnesses:

(1) I found Mr Sardana to be a straightforward witness who tried his best to assist the Tribunal. I accept his evidence. He did not think that the Appellant had provided sufficient evidence of the claimed JAJ work hence why he asked for more evidence. That was perfectly proper and was not in any way driven by vindictiveness as alleged by the Appellant.

(2) Mr Sardana clearly made some errors, in particular he:

(a) forgot to include in his calculation the £9610 (for the major works conducted by the freeholder) that had been agreed between the parties as an allowable deduction;

(b) calculated the penalty on the basis that the all of the inaccuracies were "deliberate" when in fact his view was that only the JAJ work inaccuracy was deliberate.

(c) initially only gave a 55% reduction for disclosure but later formed the view that a greater reduction should have been allowed.

(d) said at the end of the 28 February 2019 decision letter "if you do not provide me with any new information, which changes my view, within 30 days, I intend to issue the following notice: A closure notice to amend your 2016 Return based on my computation enclosed" whereas in fact he proceeded to issue a closure notice on that same day.

(e) sent the Appellant a further letter on 21 May 2019 which stated that it was a final closure notice despite the fact that he has already issued a closure notice on 28 February 2019.

Nonetheless, I found Mr Sardana to be a credible witness who was just trying to do his job despite, at points, some rather hostile correspondence from the Appellant. Mr Sardana told me that he issued the closure notice on 28 February 2019 and I accept his account. I also note that the Adjudicator's Office reviewed the relevant file properties which showed that there had been no "backdating" of the 28 February 2019 closure notice.

(3) I found Mr Drane to be a straightforward witness albeit I found his evidence to be of somewhat limited value (save to the extent that he exhibited photographs and other information relating to the property). I accept that, despite being employed by the VOA, he acted with independence. I accept his evidence as far as it goes. I say his evidence was of somewhat limited value because he is not a qualified building surveyor and did not offer any detailed view in relation to whether the claimed works had in fact taken place but instead focused on what he considered to be the value of the works if they had been completed.

(4) I found Mr Tompkinson to be a straightforward witness. He made concessions where appropriate and was candid about where he felt there were evidential gaps. I accept that, despite being employed by the VOA, he acted with independence. He has significant expertise as a building surveyor and I found his evidence, which I accept, helpful.

(5) I found the Appellant to be a less than straightforward witness. Whilst he presented his case in a clear and calm manner, I have concluded that he was not a witness of truth. Accordingly, I only accept his evidence in relation to the work that was conducted at the Property where it is supported by corroborating evidence. I do not accept that the JAJ invoice, BOQ and letter of receipt are corroborative evidence. My view of the truthfulness of the Appellant's evidence is based on the following:

(a) I found the Appellant's version of events to be incredible:

(i) on the Appellant's case, this was major refurbishment work for which he needed to ask his father for financial assistance. Despite this, the Appellant apparently did not:

(A) obtain any other quotations for the work (even if only to check whether JAJ's pricing was roughly in accordance with what other contractors would have charged);

(B) sign any sort of written agreement dealing with, for example, what would happen if the job was not completed in 3-4 weeks (despite the fact that the Appellant says he had agreed to pay JAJ at an enhanced rate to ensure the Property was completed in the timeframe).

(C) Check the BOQ and invoice in any meaningful way such that he did not realise that the BOQ total was almost £24,000 less than that invoice total and there were various other discrepancies.

(ii) on the Appellant's case, he paid (via his father) the full sum (£96,350) to JAJ within 3 days of the work commencing. This was clearly a significant sum of money that the Appellant says he had to borrow from his father. I do not believe he would have paid over the full sum to JAJ (a company that he had no prior relationship with) at a stage when very little of the work can have been completed.

(iii) The four photographs of the Property taken during the VOA inspection in 2002 when compared to the Rightmove photographs taken in 2014 do not support that major work of the sort claimed took place at the property. JAJ apparently charged £7700 for "bathroom first fix materials & labour" and "bathroom final fix inc tiling, labour and materials" yet the photographs show that the only changes between 2002 and 2014 are the removal of the bath and its replacement with a disabled access shower and some very minor re-tiling (to tile the areas previously covered by the bath). The Appellant presented to me as a savvy, astute man. I do not accept that he would have agreed to pay £7700 for this work.

(iv) The BOQ refers to downlights being installed. However, no such downlights are apparent in the 2014 photographs. When asked about this the Appellant simply stated that he was happy with the job that JAJ has done.

(v) The Appellant stated that the only work that he had undertaken to the Property prior to purchasing it was the installation of a bath and the fitting of a new oven. That is not consistent with the VOA note from the Right to Buy valuation appeal which records "new kitchen/bathroom/decoration by tenant". The extent of the work that was undertaken by the Appellant when a tenant was important to the valuation for the purposes of Right to Buy. I consider that the Appellant or his wife must have told the VOA that they had, as tenants, installed a new kitchen and bathroom and this is why the VOA notes record the same. Given that the Appellant only moved into the Property in 2001 (meaning the new kitchen and bathroom must have been fitted in 2001 or early 2002), I do not accept that the Appellant would then have replaced the kitchen and bathroom again in 2003.

(b) Whilst I accept that there might not be a full paper trail given the passage of time between the works and the enquiry being opened, the complete absence of

any verifiable documentation (such as bank statements from his father's account showing the withdrawal of the money said to have been paid to JAJ or a receipt issued by the bank into which the deposit was made or photographs showing the Property before the renovation was undertaken or safety certificates or guarantees for the electrical work and kitchen appliances) causes me, when coupled with the incredible account given by the Appellant, to conclude that there are no such documents because the Appellant's account is not a truthful one. I do not know whether it was the Appellant or someone else that produced the JAJ invoice, BOQ and letter of receipt but I am satisfied that those document do not reflect work actually done at the Property (by JAJ or anyone) and the Appellant knew full well that to be the case. I do not accept that a payment of £96,350 (or anything like it) was made to JAJ on behalf of the Appellant.

59. I set out below, by reference to the 12 items on the JAJ invoice, the refurbishment work that I consider, on the balance of probabilities, was conducted at the Property (and the amount that can be deducted in relation to that work):

(1) Item 1 (strip out entire flat and remove all debris from site": The JAJ invoice included £16,920 for this item. The photographs do not support that this work was carried out and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted. That said, given I have accepted that some refurbishment work was undertaken at the Property (see below), I accept that there is likely to have been some "strip out" and removal costs. I consider that an appropriate sum to allow is £3406 which is the maximum amount that Mr Tompkinson considers that work would have cost.

(2) Item 2 (Plasterboarding and plastering including all materials and labour): The JAJ invoice included £8,834.63 for this item. The photographs do not support that this work was carried out and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted. I am therefore of the view that no deduction should be permitted for this item.

(3) Item 3 (Carpentry including Materials and Labour): the JAJ invoice included £10,079.84 for this item. I accept the evidence of Mr Tompkinson that if the work under item 2 was not conducted, it is unlikely that there was a need to conduct all of the work claimed under this Item. The photographs do support that new laminate flooring was laid. The photographs do not support that the other work claimed under this item was carried out and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that the other work under this item was conducted. I consider that an appropriate sum to allow as a deduction for the laminate flooring is £5,155.80 which is the amount that Mr Tompkinson considers that work would have cost.

(4) Item 4 (Decorating including Materials and Labour): the JAJ invoice included £9,598.50 for this item. The photographs support that redecoration work was conducted. I have some reservations as to whether redecoration work undertaken in 2003 would have been reflected in the state or nature of the asset at the time of the disposal in 2015 but this was not a point pursued by HMRC. I consider that an appropriate sum to allow as a deduction for the redecoration is £2101.17 which is the amount that Mr Tompkinson considers that work would have cost.

(5) Item 5 (Electrical including materials and labour): the JAJ invoice included £7,857.50 for this item. The photographs do not support that this work was carried out and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted. I note here that despite being referred to in the BOQ there are no downlights visible in the 2014 photographs and the Appellant was unable to offer any satisfactory explanation as to why downlights had been include on the BOQ but do not appear to have ever been fitted. I am of the view that no deduction should be permitted for this item.

(6) Item 6 (Central Heating labour and materials inc Boiler): the JAJ invoice included £8,250 for this item. I accept Mr Tompkinson's evidence that "the boiler shown in the Rightmove photographs of [2014] appears dated. I cannot be sure but would estimate that the boiler dates from c.1985" I also note and agree with Mr Tomkinoson's observation that "the Appellant's quotation/Bill of Quantities allows for 3 new radiators in the reception room. These are not shown in the Rightmove photographs". The photographs do not, then, support that this work was carried out and, save for the JAJ JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted. I am therefore of the view that no deduction should be permitted for this item.

(7) Items 7 and 8 (Kitchen units, worktop, installation, labour and kitchen appliances): the JAJ invoice included £19,300 for these items. The photographs do not support that this work was carried out in 2003 and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted in 2003. I consider that the kitchen that can be seen in the 2014 photographs was fitted by the Appellant in 2001/2 when he was still a local authority tenant and this is why the VOA notes record that the the tenant has fitted a new kitchen. I am therefore of the view that no deduction should be permitted for these items.

(8) Items 9 and 10 (Bathroom First Fix, materials, labour and bathroom fitting labour and materials: the JAJ invoice includes £7708.88 for these items. The photographic evidence supports that the only work carried out was the removal of the bath, installation of a disabled access shower and some basic re-tiling limited to the area where the bath had previously been. I accept Mr Tompkinson's revised estimate of £600 and consider that is an appropriate deduction to allow for this item of work.

(9) Items 11 and 12 (scaffolding and decorating external woodwork 17 units): the JAJ invoice included £7800 for these items of work. The photographs do not support that this work was carried out in 2003 and, save for the JAJ invoice, BOQ and letter which I have found are not reliable documents, there is no other evidence to corroborate the Appellant's claim that this item of work was conducted in 2003. I also consider it very unlikely that the Appellant would have undertaken such costly external work when the lease provided that was the responsibility of the freeholder. In any event, I accept HMRC's submission that even if these items of work were undertaken in 2003, they were superseded by the major works undertaken by the Freeholder in 2011 such that any costs incurred on the claimed external work undertaken in 2003 would not have been reflected in the state or nature of the asset at the time of the disposal in 2015. I am therefore of the view that no deduction should be permitted for these items.

60. In relation to the penalty as it relates to the inaccuracy arising from the deduction claimed for the JAJ works, I am satisfied for the reasons explained above that the Appellant knew that he had not incurred £96,350 of refurbishment costs and knew that by seeking to deduct that sum he was filing an inaccurate tax return. The Appellant was, therefore, properly liable to a penalty on the deliberate basis. There was no challenge to the revised calculation of the penalty and I am satisfied that it has now been properly calculated.

61. In relation to the penalty as it relates to the other inaccuracies, relatively little attention was given by the parties to this aspect of the case. HMRC's case was that there were admitted inaccuracies and, therefore, that pointed towards the Appellant having been careless. However, in circumstances where the Appellant stated that his accountants advised him as to the reliefs and deductions claimed and where the correspondence demonstrates that the Appellant's accountants were, even after Mr Sardana had given a clear steer on the availability of those deductions and reliefs, continuing to argue that the reliefs/deductions had been properly claimed, I am not satisfied that HMRC has established that the Appellant was careless.

62. In the above circumstances, I am of the view that:

(1) the Appellant is presently undercharged because he was permitted to deduct £23,500 in relation to the refurbishment work whereas I have found that the costs of the work was no more than £11,262.97. I therefore find that the Appellant's CGT liability should be increased by a corresponding amount. I direct that HMRC should now recalculate the Appellant's liability (also taking into account the £9610 referred to at paragraph 6(a) above) and provide the revised liability figure to the Tribunal and the Appellant within 14 days.

(2) the Appellant is liable to a deliberate penalty in the sum of £9281.09 in relation to the inaccuracy arising from the deduction claimed for the JAJ work.

(3) HMRC has not established that the Appellant is liable to a penalty in relation to the other inaccuracies (even on the careless basis).

63. Accordingly:

(1) the Appellant's appeal against his assessed liability to Capital Gains Tax is dismissed and his liability is increased in line with paragraph 61(1) above.

(2) The Appellant's appeal against the penalty imposed pursuant to Schedule 24 FA 2007 is allowed in part and the penalty is reduced to £9281.09 in line with paragraphs 61(2) and (3) above.

64. As a postscript: I have found that the closure notice was issued on 28 February 2019. Even if had not been and instead was not issued until July 2019, I do not consider that HMRC were correct to say that would have invalidated the penalty issued in May 2019. It seems to me that whether or not a closure notice had been issued at that point, there was still potential lost revenue within the meaning of Schedule 24 (see *HMRC v James Robertson* [2019] UKUT 0202 (TC)).

RIGHT TO APPLY FOR PERMISSION TO APPEAL

65. 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.

DAVID BEDENHAM
TRIBUNAL JUDGE

RELEASE DATE: 09 APRIL 2021