



[2021] UKFTT 0213 (TC)

TC08163

INCOME Tax - Discovery assessment - Closure Notice – penalties – appeals dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal number: TC/2018/06420 and
TC/2019/02113**

BETWEEN

KIERAN KUMAR UPADRASTA

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

The hearing took place on 12 April 2021. With the consent of the parties, the form of the hearing was video conference on the Tribunal video platform.

Having heard Mr Simon Bracegirdle, litigator of HMRC

The Appellant was not present

Format of Decision

INTRODUCTION including the procedural background to the hearing

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DECISION

INTRODUCTION

2. Rarely has the quotation “Oh, what a tangled web we weave...” been more appropriate. The tortuous and lengthy arguments advanced by the appellant frequently conflict one with the other and some aspects are literally incredible. These appeals are also extraordinary in the sense that the appellant denies absolutely everything, including the fact that he attended meetings and had telephone calls with HMRC, which are documented. He puts HMRC to their proof albeit he declined to participate in a hearing.

3. Undoubtedly the burden of proof lies with HMRC in regard to the Discovery Assessment and penalties and they have discharged that for the reasons that I set out below.

A. Decision

4. HMRC’s Skeleton Argument narrated not only the original decisions but also their proposed variation thereto. For the reasons set out below, we dismiss the appeals and confirm the decisions in the revised amounts.

B. The subject matter in the appeals

5. The appellant had appealed the following decisions, namely:-

Issue Date	Legislation	Description	Amount	HMRC’s revised amount
22/06/2018	Section 28A(1) & (2) TMA 1970	Closure Notice – year ended 5 April 2014	£4,093.94	£1,092.40
22/06/2018	Section 29 TMA 1970	Discovery Assessment – year ended 5 April 2015	£46,643.92	£15,875.19
22/06/2018	Section 28A(1) & (2) TMA 1970	Closure Notice – year ended 5 April 2016	£51,836.54	£27,698.52
21/03/2019	Schedule 24 Finance Act 2007	Penalty Assessment 2013/14	£2,435.89	£649.97
21/03/2019	Schedule 24 Finance Act 2007	Penalty Assessment 2014/15	£27,753.13	£9,445.73
21/03/2019	Schedule 24 Finance Act 2007	Penalty Assessment 2015/16	£30,842.74	£16,641.26

C. Preliminary Issues

(a) *The appellant’s application for the appeals to be decided on the papers*

6. These appeals were listed for hearing by video on six non-consecutive days commencing on 9 April 2021 and finishing on 21 April 2021.

7. The Tribunal had intimated to the parties that the appellant’s application dated 3 April 2021 that the appeal be decided on the basis of the available papers and HMRC’s vigorous opposition thereto, would be decided as a preliminary matter.

8. Prior to discovering that it would be impossible to conduct the hearing for technical reasons, I had explained to HMRC (in the appellant’s absence whilst the clerk endeavoured to help the appellant to connect to the hearing) that as far as the appellant’s application was concerned, I had had due regard to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber)

Rules 2009 (as amended) ("the Rules") and, in particular, to Rules 2 and 5. HMRC very properly decided to withdraw their opposition to the appellant's application. Accordingly this appeal fell to be decided on the basis of the papers.

9. I had five original Bundles extending in total to in excess of 1800 pages together with an authorities Bundle extending to 49 cases, the vast majority of which had been cited by the appellant. I also had a Supplementary Bundle with copies of the 2013/14 tax return, the 2013/14 return summary and the 2015/16 return summary. I had extensive Skeleton Arguments from both parties together with other correspondence from the appellant, much of which was duplicated. On 18 April 2021, after the hearing and unsolicited, the appellant lodged with the Tribunal and HMRC a further two page submission which reiterated points made elsewhere.

(b) The appellant's ability to litigate

10. On 16 December 2020, the appellant had granted a Trust Deed for the benefit of creditors in favour of Begbies Traynor and a notice to that effect was published in the Register of Insolvencies on 21 December 2020. Part 14 of The Bankruptcy (Scotland) Act 2016 applies to the appellant's estate. The Trustee confirmed that he did not wish to litigate these appeals. No objection was taken to the appellant so doing personally.

D. HMRC's position

11. In summary it is HMRC's case that the appellant omitted or understated the following taxable income from his tax returns:-

- (a) In 2013/14, employment income;
- (b) In 2013/14, 2014/15 and 2015/16, profits from self-employment;
- (c) In 2013/14, 2014/15 and 2015/16, profits from UK land and property;
- (d) In 2013/14, 2014/15 and 2015/16, from bank interest.

12. The appellant denies receiving any employment income, self-employment income or property income. Bizarrely, although he denies having any self-employment income, nevertheless he seeks to claim expenditure to set against that. HMRC's view is that if there was any such expenditure it was not incurred wholly and exclusively for the purposes of said business.

13. In relation to the penalties, HMRC argue that the behaviour in submitting incorrect returns was deliberate.

14. HMRC, having reviewed the Skeleton Arguments and all of the evidence, requested that the Tribunal confirms that the discovery assessment was appropriately and timeously raised. In particular it was not stale, and they argue that they had discharged the burden of proof both in regard to the discovery assessment and the penalties but that the appellant had not discharged his burden of proof. In particular, as we note above, HMRC requested that the Tribunal vary:-

- (a) The tax difference in the Closure Notice for 2013/14 to £1,092.40.
- (b) The assessment for 2014/15 to £15,875.19.
- (c) The tax difference in the Closure Notice for 2015/16 to £27,698.52 and
- (d) The total of the penalty assessments to £26,736.96.

E. High level overview of the appellant's arguments

15. HMRC's Statement of Case which extends to 154 paragraphs is dated 29 May 2019 and the appellant has repeatedly stated that he denies "each and every arguments (*sic*)/allegation in that Statement of Case and indeed in the decisions under appeal".

16. Although the appellant has lodged lengthy argument punctuated by references to case law, in an email to the Tribunal dated 24 March 2021, his primary argument was:

"This case is all about facts of liabilities in question and the tribunal has to decide who the party is liable for taxation when hearing begins. As per all documentation evidence, a third-party company (corporate) is liable for taxation and they have agreed their tax liability toward the respondent wrongly diverting the third-party liability bill unlawfully, irrationally towards the appellant....

AT (*sic*) first place, HMRC should not issue tax decisions, penalties to the appellant. The taxation matter is between Texpark Investments Ltd (Corporate) and HMRC. HMRC issued tax decisions, penalties unlawfully, irrationally to the appellant in this case as the appellant is not liable for taxation."

17. He went on to state that he had granted a Power of Attorney in favour of one Sammaiah Molugri ("SM") covering the period 5 April 2013 to 31 December 2017 and implied that he was not responsible for anything in that period.

18. He states that he has been unemployed for seven years and has been looking for a job. He says that he has not received any income at any stage apart from benefits. He alleges that he is homeless and that the only property he has ever owned is a property at 107 Myrtle Road, Hounslow.

19. He states that none of the bank accounts in his name belong to him.

20. He argues that HMRC make up figures "...to terrorise people".

21. His email of 18 April 2021, stated unequivocally that he had never been self-employed and had never declared that he was. If he had been employed it was the employer's responsibility to account for PAYE and NIC. He did not own any land as averred by HMRC and nor did he have any bank accounts.

F. The facts

22. Although everything is denied by the appellant, unfortunately his own accounts are riven with inconsistencies and contradictions. The standard of proof is on the balance of probability. I find that HMRC have established the facts that I set out in the following paragraphs. Given the extensive evidence it is more cohesive to deal with the issues by topic and give my reasoning under each heading.

23. I do not propose to address all of the appellant's arguments but only those which I consider relevant to the issues under appeal. I address TexPark Investments Limited ("TexPark") in particular detail, because that is at the heart of the appeal.

(a) Power of Attorney

24. The other key issue is the Power of Attorney.

25. On 5 April 2013, the appellant signed a General Power of Attorney, in terms of Section 10 of the Powers of Attorney Act 1971, in favour of SM.

26. At a meeting with HMRC on 6 June 2014 (“the June 2014 meeting”), the appellant told HMRC that SM is also known as Siva Sugali and that (s)he¹ also resided at 107 Myrtle Road which is the appellant’s home address. I observe in that regard that in an affidavit dated 1 June 2018 (“the June Affidavit”) lodged by him with HMRC and the Tribunal, the appellant stated that only he lived at that address.

27. As can be seen from the findings in fact, SM can be seen to have a role in a number of the appellant’s companies.

28. In summary, the appellant argues that he is not responsible for anything done by SM and tax returns, returns to Companies House, operation of bank accounts and essentially anything else that the appellant denies must have been done by SM.

29. All of the documents, bank statements and agreements obtained by HMRC in the course of their enquiries are in the name of, or appear to have been dealt with personally by, the appellant.

30. Officer Blackman wrote to SM on 6 November 2018 asking about the capacity in which (s)he acted for the appellant. There was no reply and the Statement of Case filed by HMRC on 29 May 2019 made that point at paragraph 59. Ultimately, on 27 September 2019 the reply was received. SM enclosed a letter that purported to have been dated 6 February 2019 and it included the following statements:-

(a) “Initially I used to sign on all correspondence as a (*sic*) ‘Kieran’ since April 2013 since I am acting for Mr. Upadrasta. However, Mr Upadrasta warned me to sign as my name and asked me to add wording that I am acting as attorney under my signature.”

(b) “I have opened Santander account ... for Mr. Upadrasta as he is critically/terminally ill patient with Lung Cancer and Heart Diseases. I used Santander accounts on day to day basis”.

(c) “A third-party investor – Texpark Investments Limited, has fraudulently opened following bank accounts on (*sic*) on their name first, and then they renamed/changed bank account names to Mr. Upadrasta’s name, without my consent/without Mr. Upadrasta’s consent”. Those were said to be an RBOS account and NatWest account.

(d) “Vinni Rathod of Texpark Investments Limited, has confirmed with me that he/she has opened above said ... accounts ... and they have withdrawn all monies fully from above two bank accounts.”

31. Officer Blackman noted the contents of that letter but it did not change his opinion. It has not changed my opinion.

32. Firstly, the appellant has produced a statement, purportedly from SM, dated 25 February 2016 which states: “I have acted as a power of attorney for kieran upadrasta from 03/04/2013 until 31/12/2017”. It then narrates that he had debited the appellant’s bank account for the sums required to make five payments to Organon Management Services P Limited (“Organon”), a Polish company, in a total of £88,431.50 in the period 31 March 2015 to 31 March 2016. Each invoice states that it is payable on receipt.

33. Quite how he could have written that statement in February 2016 when the 31 March 2016 invoice could not possibly have been received, has not been explained.

34. The position is exacerbated by another “To Whom It May Concern” letter dated 20 March 2018 produced by the appellant. It is from an alleged company director of TATA

¹ Various referred to as he or she in the Bundles

Investments Ltd who states, as an independent witness, s(he) can confirm that those invoices were paid by the appellant on 4 April 2016. Both statements cannot be correct.

35. There is no evidence of any payments being made by the appellant to Organon and nor is there an explanation why a Polish company should be providing computer consultancy to the appellant's UK clients at their places of business.

36. Furthermore, there are inconsistencies in the invoices which are all for "Computer Consulting Costs, attending work on site at your client place ...". The first invoice, number 1234, was for the month of March 2015 but the second, which was invoice number 3742, included one week in April 2015 and then seven weeks in August and September 2015. It was dated 26 September 2015. That seems odd.

37. The third invoice, number 3743, was dated 31 October 2015 and covered work in the month of October 2015. It is inherently improbable that no other invoices would have been issued by Organon in the period of time between those two invoices.

38. The fourth invoice, number 4102, is dated 31 January 2016 and improbably the first item is for work in the week ending 17 December 2015 and the second for work in the week "ending 18.12.2015". The last invoice, number 4327, is dated 31 March 2016 and has two separate entries for work done allegedly in the week ending 29 January 2016.

39. Each invoice is marked as paid. HMRC have argued that these invoices are not credible evidence of costs incurred and also there is no evidence of any payments being made. I agree. No deduction should be allowed for these costs.

40. I have concluded, as did HMRC, that SM's statement was inherently incredible. I have set out my findings on TexPark at length and found that they acted in concert with the appellant, if they existed.

41. SM's statement about the appellant's illness is clearly inaccurate and not even the appellant, who stresses that he has a number of health conditions has argued along those lines. It is also entirely inconsistent with the appellant's acknowledged activities during the period with which this appeal is concerned.

42. It is obvious from the first statement, if it is to be believed, that the appellant knew that SM was using his signature. There is not one document in the Bundles where SM has signed in his/her name and intimated that (s)he was acting as attorney.

43. The bank account to which SM referred was in fact opened before SM was appointed as attorney so that statement is untrue. There are bank statements for that account from April 2012 and in fact those show salary payments to the appellant from the appellant's then employer.

44. Whilst that statement refers to one Santander account there were in fact four others registered at SM's address. One of those was a loan account which the appellant certainly acknowledged and operated. There is no explanation as to why he was operating from an address at 29 Harley Street. I find that there is no reliance to be put on this letter.

45. In any event the appellant is responsible for the actings of his attorney and the more so if he was aware that his signature was being appended to documents.

(b) The enquiries

46. The appellant's Self-Assessment tax return ("SATR") for 2013/14 was filed on 15 May 2014 and showed income from property relating to three properties. The gross rental was £26,500 and the taxable profit after expenses was £17,300. It showed no employment income.

47. An amendment was made to the SATR on 30 July 2014 showing only two properties. The gross rental was £20,100 and the taxable profit after expenses was £6,480. It also indicated that all property income ceased in 2013/14.

48. On 16 July 2014, a full Income Tax enquiry was opened into that SATR under Section 9A of the Taxes Management Act 1970 (“TMA”).

49. On 8 October 2014 HMRC issued a notice under Schedule 36 of the Finance Act 2008 requiring information and documents that had been requested on 16 July 2014. On 3 November 2014, the appellant responded stating that the police had seized all his documentation and that he was in very poor health. Apart from the limited information furnished by London Court Chambers Limited on behalf of the appellant on 31 December 2014, the appellant continued to state that the police held his records so he could not provide information.

50. On 13 November 2016, the appellant wrote to HMRC stating the following:-

(a) His home at 107 Myrtle Road had been a two bedroom single dwelling. He had converted it into five studio rooms in 2014 with a view to letting them out. Shortly after construction Hounslow Council had served an enforcement notice demanding the demolition of the five rooms, front porch (which he described as a “front pouch”) and rear extension since planning permission had been refused on the basis that it was an unauthorised development. He argued that he had instantly complied with the Notice and had not rented the rooms. The property had been reinstated to its original position. He had lost money because of the construction and demolition work.

(b) He owned no other properties.

(c) He had not had any income or expenses during that period as the situation was chaotic because he had been ill.

(d) Due to his ill health a carer had completed his 2013/14 SATR but when he had realised there were errors he later amended it.

(e) The rental income of £26,500 was actually rental income he had received on his grandparents behalf derived from properties they owned in India. That income had already been taxed in India and he had remitted the income to his grandparents. He had no documents or records because they were all retained outside the UK.

(f) He stated that he lived by himself at 107 Myrtle Road with the help of Social Services.

(g) He had purchased 107 Myrtle Road for £195,000. The deposit of £48,750 was funded by way of £20,516 from his grandparents and unsecured loans of £28,234 from UK banks, the balance of £146,250 was a mortgage with HSBC Bank.

(h) He had over £90,000 in unsecured loan debts in addition to a £140,000 mortgage. The £90,000 was made up of £25,000 from Lloyds Bank, £20,000 from Santander, £15,000 from Nationwide Building Society and £30,000 from private individuals or entities.

(i) He did not have a letter from the police confirming which of his personal items were held by them.

51. On 10 March 2017, HMRC responded in detail to that letter requesting information and, in particular, sight of the supporting evidence relating to the construction and demolition works.

52. The officer pointed out that that letter contradicted what HMRC had already been told by the appellant about his rental income. Specifically the officer pointed out that at the

June 2014 meeting the appellant had stated that the rental income of £26,000 was his income. The original SATR for 2013/14 filed before that meeting had shown income of £26,500 and the amended SATR filed a month after the meeting, had shown rental income of £20,100.

53. The officer pointed out that their records showed that he had purchased three other properties in Myrtle Road and he had paid stamp duty on each purchase.

54. On 13 March 2017, a further full Income Tax enquiry was opened into the appellant's SATR for 2015/16 under Section 9A TMA.

55. On 17 March 2017, the appellant called HMRC to speak to the officer and referred to the letter of 10 March 2017. He stated that he did not own all of the properties and that his parents were linked to the other properties. He was asked to produce evidence. As far as the demolition and construction work was concerned he said that he did not have contract details for all of it as some of the agreements had been verbal.

56. On 19 March 2017, the appellant again wrote to HMRC about the work on 107 Myrtle Road and said that the construction and demolition work had cost him £61,000. He denied any knowledge of stamp duty on the other three properties. He offered to settle the enquiries into his SATRs for £1,500.

57. The officer responded on 7 April 2017 referencing the telephone call about the stamp duty and pointing out that he disagreed with the appellant. He rejected the offer pointing out that it did not take account of the four properties. He asked the appellant to complete bank mandates and a bank account certificate.

58. On 5 May 2017 the appellant provided some bank mandates but not for other bank accounts which he was known to have.

59. On 17 January 2018, HMRC wrote to the appellant confirming that they were extending their enquiries to include 2014/15. HMRC had analysed bank statements and they specifically asked the appellant to give an explanation of deposits amounting to:

(a) £36,791.18 by Crystal & Co (described in the bank statements as relating to 107 Myrtle Road),

(b) £13,415.23 by Your Move, and

(c) £14,780 from a Mr and Mrs Sharma in respect of 68 Myrtle Road.

60. Correspondence ensued. In a letter dated 18 January 2018, he stated that he had voluntarily managed his grandparent's properties and their rents used to go into his bank account. He had not been paid by them and he had ceased helping them due to his ill-health.

61. He then sent a number of letters to HMRC repeating the same information which included the statement "Landlord profession is not my main job". He also repeatedly referred to his losses in respect of the construction and demolition work using the wording "I built front pouch". (See paragraph 118 below).

62. He submitted schedules which claimed detailed expenditure incurred on 107 Myrtle Road amounting to £25,980 in 2012/13, £94,578 in 2013/14, £29,958 for 2014/15 and £42,580 for 2015/16.

63. He claimed estimated losses of £25,000, £70,000 and £1.6 million for 2013/14, 2014/15 and 2015/16 respectively.

64. On 9 March 2018, the appellant wrote to HMRC stating:

"... we have found a lot of evidences ... My account team has said that third parties have invested in my property and there were few investment agreements. Accountant is

reviewing clauses in these investment agreements as all business income goes to third parties for first four years as they invested their money in my property. It's agreed that Their (*sic*) investment gets repaid in a way they retain first four years business income, which is opposed to monthly instalment premiums in loan agreements. Clauses in investment agreement says, third parties are liable for taxes to HMRC, and not me."

65. This was the first intimation that there was any third party involvement and he was referring to TexPark (see paragraphs 103 to 150 below).

66. On 24 March 2018, the appellant sent a 22 page response to HMRC which *inter alia* included the following statements:-

(a) In relation to various monies in the bank accounts he said that "my position is an intermediary (it's not my income) and/or I am a volunteer. I did charity service."

(b) "I have given 'power of attorney' to my colleagues on all property and financial matters since April 2013. As such I have not directly involved into any of the transactions (*sic*). I have gained all my knowledge through you and I have the same knowledge of whatever the knowledge you have on this matter."

(c) "There were over £5,000 expenses related to my business travel and hotel accommodations at client places as well in year 2013/14."

(d) "I write confirm (*sic*), my annual business turnover was below £81,000 for the year 2013/14."

(e) "Further, my house was uninhabitable while making kitchens, bathrooms in studio flats during building works ... and I have stayed in hotels such times for over 30 days (*sic*) There were hotel expenses £4,224.00 too in year 2014/15."

67. On 23 April 2018, the appellant met with HMRC in their offices at Croydon ("the April 2018 meeting"), a fact that he admits in the June affidavit, although he disputed what happened. Notes of the meeting were issued to him on 15 May 2018 but he made no response.

68. Those notes of meeting are extensive but some of the key points are:-

(a) The appellant explained his relationship with TexPark.

(b) He confirmed that he had been employed until 2013 and PAYE had been deducted.

(c) In 2014 he had commenced self-employment which continued until 2017.

(d) Since 2017 he had been unemployed.

(e) There was a discussion about the recently submitted self-employment pages for the three years to 2016/17. The appellant argued that everything was the fault of his attorney. He was asked to clarify the source of the income and losses referenced on the self-employment pages and he stated that it related to furnished holiday lets and self-employment. He stated that he had not received rental income directly from 107 Myrtle Road.

(f) When asked if 107 Myrtle Road had been let, he said that he had no knowledge because he had left the property on the day the Investment Agreement with TexPark had been signed and he returned once the demolition had been finished. He stated that the property had reverted back to its original design on 1 January 2016. He had stayed with his sister in the interim. (That contrasts with his claim for hotel expenses (see paragraph 173 below).

(g) He was asked who owned the properties at 67, 68 and 69 Myrtle Road and he said that he owned the properties but he thought that all rents went into a Royal Bank of

Scotland account as part of the agreement with TexPark. It was pointed out to him that the Investment Agreement did not reference those properties.

(h) He said that he had zero hours contracts with Organon, Hays and Experis Limited for consultancy work.

(i) He said he had no connection with London Court Chambers Limited.

(j) In summary the appellant said he knew little or nothing about properties being rented out as his attorney had dealt with all such matters.

(k) On being asked why he had not mentioned anything about an attorney until recent weeks, he had no explanation.

69. In May 2018, the appellant made an application to the Tribunal to obtain a Closure Notice against the years 2013/14, 2014/15 and 2015/16. Following that application, Officer Blackman decided to issue Closure Notices under Section 28A TMA on 22 June 2018 for the years 2013/14 and 2015/16 together with a Discovery Assessment for the year 2014/15 under Section 29 (1)(b) TMA.

70. On 10 April 2019, the officer stated that he had formed the view that inaccuracies in the returns were deliberate and the penalties under appeal were raised on that basis.

71. On 22 June 2018, the enquiries were closed and the disputed decisions issued.

72. Very properly, the officer now argues that since he has ascertained from the Land Registry that the properties that underpinned the Closure Notices and Assessment had been sold in 2015/16, the Closure Notices and Assessment and resulting penalties should be reduced accordingly. Hence the variations that have been sought by HMRC.

(c) Overview of Self-Employment

73. As can be seen, the appellant states that he has never been self-employed. That is contradicted by the evidence and patently at times he has been self-employed.

74. HMRC set up a self-assessment record for the appellant on 13 July 2007 having received notification from him that he had been self-employed since November 2006. At the April 2018 meeting with HMRC, the appellant stated that he had been self-employed from 2014 to 2017.

75. At that meeting, the HMRC officers pointed out that the appellant had submitted self-employment pages in the SATRs for the three tax years to 2016/17 which had been filed on 9 April 2018 whereas he had previously only declared £10,000 in the 2015 SATR. The appellant simply denied that he had made any profits and attributed any error to SM.

76. In the June affidavit, he stated:

“I do not have any profits. I had losses over £1.5M for the tax years 2013-14, 2014-15, 2015-16 ... I am struggling to cope with my business losses (*sic*) /debt that is above £1.5M. ... I have business losses above of £25000 for the year 2013-14 ... I have business losses above of £70000 for the year 2014-15 ... I have business losses above of £1.5M for the year 2015-16”.

77. In the exhibits attached to the affidavit he referred to expenses related to “... my business travel and hotel accommodations at client places” and he referred to his “business clients”.

78. The appellant lodged a second affidavit on 3 July 2018 and a further three affidavits dated 6 July 2018 all of which referenced business losses, expenses and similar matters. The same is true of the other two affidavits dated 16 February and 18 March 2019.

79. I find that he was self-employed in each of the years covered by the appeal.

(d) Unemployment and employment

80. As can be seen, the appellant argues that he has been unemployed for seven years. That is entirely inconsistent with the evidence of his tax returns, his endeavour to claim expenses and the notes of various meetings with HMRC.

81. The appellant's 2015/16 SATR included a page showing £10,600 employment income from IP Security Services Limited.

82. At the June 2014 meeting, he stated that he had been employed by Nova IT Consulting Limited until 15 March 2014 and that he was thereafter a full time student.

83. At the April 2018 meeting with HMRC, he said that he had been unemployed from 2017 and in receipt of benefits.

(e) Nova IT Consulting Limited

84. In the years 2007/08 to 2012/13 inclusive, the appellant filed tax returns showing pay from employment with this company as his sole income in each year.

85. The Companies House return dated 25 April 2009 (company registration number 05433897) shows clearly that at that date the appellant was a director and the sole shareholder. I will return to this point but the address logged with Companies House is 145-157 2nd Floor, St John Street, London EC1V 4PY ("the London address"). It was incorporated on 22 April 2005 and dissolved following a voluntary winding up on 1 February 2011.

86. At the June 2014 meeting, which HMRC record as having taken place at the London address, the appellant confirmed that it was the registered office of what was called Nova IT Consulting Limited. The appellant told HMRC he had been the only employee of the company but the company had never traded. The sole director of the company, who was not present at the meeting, was SM who was also known as Siva Sugali.

87. The appellant told HMRC that that company's former name was Network Consultancy Limited which had been incorporated on 26 June 2003 and the name had been changed on 28 January 2011.

88. HMRC have produced the Annual Return filed with Companies House on 23 March 2015 for London Court Chambers Limited with company registration number 04812321. It shows that the appellant is a director of that company and that the shareholder was Nova IT Consulting Limited.

89. The audited accounts for Nova IT Consulting Limited for the period to 30 June 2013, were signed by SM as director and show that its registered number was 04812321. I therefore find that London Court Chambers Limited was previously known as Nova IT Consulting Limited which in turn was previously known as Network Consultancy Limited. The company accounts for London Court Chambers Limited for the period to 30 June 2014 were signed by the appellant.

90. HMRC have produced a Certificate of Incorporation dated 19 November 2014 for company registration number 09317597 for yet another Nova IT Consulting Limited. The Companies House return dated 18 November 2014, shows that the appellant was the sole shareholder and director. The registered office address was his home address at the time, namely, 107 Myrtle Road. It was dissolved on 8 December 2015.

91. HMRC have identified payments from employment totalling £8,395 in 2014/15 from Nova IT Consulting Limited paid into a Santander account. There were also payments in 2012/13 totalling £41,524, with which this appeal is not concerned.

92. The appellant has provided a document which purports to be a letter from Nova IT Consulting Limited dated 31 March 2014. This is addressed to “To Whom It May Concern” and states that they had received a full refund of £35,000 salary because the appellant had been unable to carry out his work due to ill-health. The appellant’s bank accounts show no payment of £35,000.

93. The appellant has repeatedly stated that he has never earned more than £10,000 per annum.

94. I do not accept that that letter is genuine.

(f) IP Security Limited and other companies

95. The Power of Attorney stated that SM works as “Secretary at IP Security Limited (company number 07511653)”.

96. The Certificate of Incorporation for that company is dated 31 January 2011 and the appellant is recorded as being the sole director and shareholder. It was dissolved on 5 January 2016.

97. When HMRC reviewed the appellant’s bank statements they found deposits from this company in the sums of £15,031 in 2013/14, £68,981 in 2014/15 and £8,400 in 2015/16.

98. HMRC had formed the view that these represented income from self-employment since it was a dormant company controlled by him. However, in their Skeleton Argument they accept that that was not the case and they had therefore varied the Closure Notices and Assessment accordingly.

(g) London Court Chambers Limited

99. On 31 December 2014 a letter was received by HMRC from this company. It provided the purchase date and price in relation to the properties and stated that they were acting for the appellant because of his ill-health.

100. On 19 January 2015, HMRC called London Court Chambers leaving a message. The appellant returned the call and explained that the author of that letter was somebody he knew who had dealt with HMRC’s letter but that they should continue to correspond with him.

101. In a letter to HMRC dated 13 November 2016, the appellant denied all knowledge of the individual concerned.

(h) Cyber Security Consulting Limited

102. HMRC have produced the Certificate of Incorporation dated 4 November 2015 for this company which was incorporated under the name Soft Security Solutions Limited. The name was changed on 26 September 2016. The registration application to Companies House listed the appellant as one of the directors and the sole shareholder. Dormant accounts were submitted to Companies House to the year 30 November 2016.

(i) TexPark Investments Limited

103. TexPark, with company registration number 07900827, was incorporated on 6 January 2012 and has submitted dormant accounts to Companies House each year.

104. The first time that the appellant mentioned TexPark to HMRC, and that was not even by name, was in March 2018.

(j) Investment Agreement

105. The first agreement upon which the appellant relies is what is described as an Investment Agreement dated 6 April 2013. TexPark is defined as the “Investor” with a trading address at

145-157, 2nd floor, St Johns road (sic), London EC1V 4PW. However, the witnesses, who are designed as employees of the company both give the address as St John Street. That is the London address.

106. The narrative under the heading “Background” stated that the appellant “... had a plan to run a furnished holiday letting business (‘UK FHL business’)” at the appellant’s then address, namely 107 Myrtle Road, Hounslow. It stated that the appellant “... has stated that he lives with his sister family (*sic*) in a separate property in London.” and that the appellant required money to finance its business.

107. The key clauses include the following:-

(a) Clause 4 – “The Investor will invest directly to the Borrowers (*sic*) Property a secured term Investment facility of an amount up to Ninety Thousands (£90,000) ...

(b) Clause 5 - The Borrower must provide access to Investor and allow the Investor to undertake all following works between 6th April 2014 and 4th April 2015.

(i) Building works at 107 Myrtle Road that including but not limited to including doors, gates, shutters, mains water and gas systems, land and structures, converting property in to five studio flats, Erection of front pouch (*sic*) and canopy, Rear building extension and convert this as studio flat ...

(c) Clause 6 – The Investor will not let the Borrower to undertake any works as specification in above para 5(i) and (*sic*)

(d) Clause 7 – The investor will not release any amount to the borrower under this Agreement solely for the Purpose”.

108. I have recorded that as it was written, not least because some of it makes no sense at all. “Purpose” is defined in Clause 1 as being:

“Building works at property: 107 Myrtle Road, that including but not limited to
Converting property into 5 studio flats,
Erection of front pouch and canopy,
Rear building extension and convert this as studio flat”.

109. Clause 5 seems to suggest that it is the Investor which is undertaking all of the building works and not the appellant, yet the appellant consistently states that he did so.

110. The agreement goes on to state:

“9. The borrower will repay the investment in a way by surrendering all earnings, rents and whole income (100%) in full to the Investor from 6th April 2013 until 5th April 2017

10. The investor is responsible and liable for all matters arising from the business from 6th April 2013 until 5th April 2017

11. All rental and business agreements must be written in the name of ‘Texpark Investments Limited’ and ‘Holiday lettings tenants’ or third parties from 6th April 2013 until 5th April 2017

12. The borrower and/or all parties must deposit all business earnings and whole income in RBS Bank Account Number: [****] with sort code ...

13. The borrower must only use RBS Bank account number [****] ... for receiving all earnings and whole income of his/her business and the borrower provides online internet

banking access of RBS Bank accounts to the investor from 6th April 2013. Until 5th April 2017.”

111. The numbering in the agreement is not consistent and the agreement goes on to narrate at the second Clause 14 that: “The investor is liable for all tax matters arises (*sic*) in this or its income from 6th April 2013 until 5th April 2017”. The following clauses provide that the Investor is also responsible for bookkeeping, record maintenance, annual accounts, tax returns etc and that all payments will be made to the Investor who will pay all taxes including PAYE, NIC, corporation tax, income tax and capital gains tax.

112. The appellant was under an obligation to pay interest on the amount of “earnings ... and income outstanding from time to time at the rate of 5%”.

113. At paragraph 24 it states that:

“The Investment made under this Agreement and any interest on the earnings and income will be secured by way of certain security interests which will be granted by the Borrower in favour of the Investor under the Security Document. No investment will be advanced to the Borrowers (*sic*) property under this Agreement until the Security Document has been properly executed by the Borrower and delivered to the Investor.”

114. At the April 2018 meeting, Officer Davis had asked for a copy of the Security Document and the appellant confirmed that he did have it and he agreed to provide it to HMRC.

115. No such document has ever been produced.

116. As HMRC pointed out at the April 2018 meeting, if this was a genuine agreement it should have been produced four years earlier when HMRC first started enquiring about property matters. I agree.

117. The agreement is drafted in extraordinary terms.

118. As can be seen from the preceding paragraphs, there are references to the word “pouch” instead of porch. That misspelling litters the appellant’s correspondence, statements and affidavits. The agreement also references UK FHL, being the abbreviation the appellant consistently uses when referencing rentals.

119. Although there is provision for TexPark to access the rental payments in the RBS account, the bank statements show that no money was ever paid to them.

120. There is a letter from TexPark suggesting that they used the appellant’s name as a trading name and that that would not be an unusual thing to do. It would be!

121. As can be seen from paragraph 30 above, there was a suggestion that TexPark had opened and operated the account. I do not accept that. There are numerous small ATM transactions shown on those bank statements to say nothing of transactions at Debenhams, Poundland and other stores including a food store which appears in other bank accounts belonging to the appellant. That does not look like a commercial bank account.

122. I agree with HMRC that it is inherently unlikely that this Agreement is genuine. It certainly is not at arms-length. I find that this Agreement is a very belated attempt at window dressing to hide a liability to tax.

(k) *Loan Agreements*

123. Three loan agreements have also been produced. The first two give TexPark’s address as their “Lending office” in Stirling. The first of those is dated 1 June 2013 and the narrative states that the appellant “... requires money to finance its business and the Lender has agreed to lend the money to the Borrower”. Clauses 4 and 5 state that:

“4. The Lender will make available to the Borrower a secured term loan facility of an amount up to Seventy four Thousands (£25,000) ... on the terms and subject to the conditions of this Agreement.

5. The Facility will be available for drawdown in a single instalment until 6 months from the date of this Agreement”.

124. No evidence of the drawdown has been produced. The loan was repayable by 31 December 2018.

125. At Clause 8 it states that the appellant would use any amount borrowed under the Agreement solely for the Purpose which is defined in Clause 1 as “Building works, front pouch, rear extension”.

126. Interestingly, there is a specific condition that the facility will only be made available if the warranties contained in the Agreement are true and correct. I say interestingly because the first warranty is that the appellant warrants that “it is a private limited company ...”. The appellant most certainly was not. Another warranty relates to financial statements and information provided by or on behalf of the borrower in relation to the appellant’s financial affairs. Nothing has been produced.

127. At Clause 21 it states that the appellant would deliver to the lender a copy of its audited financial statements within 180 days after the end of each of its financial years. Of course the appellant denies that he was ever self-employed or had any income.

128. As with the Investment Agreement it provides for a Security Document and that has not been produced. It also provides for interest to be paid at the rate of 5%.

129. The second Loan Agreement is dated 9 July 2014 and is in similar terms but is for a loan of £74,000 repayable by 31 December 2020.

130. The third Loan Agreement is dated 1 April 2016. In this instance, the same address is used as in the Investor Agreement as opposed to the Stirling address in the previous Loan Agreements and the company is designed “Texpark” not “TexPark”.

131. Clause 1 reads: “The Lender promises to loan £1,600,000 GBP to the Borrower For (*sic*) debt consolidation purposes”.

132. Clause 2 provides that the monies will be paid not to the appellant but to a company called Soft Security Solutions Limited on behalf of the appellant.

133. Clause 8 reads:

“This Loan is secured by the following (“the Security”):

107 Myrtle road (*sic*) Hounslow TW3 1QE and his sister properties as secured by collateral”.

134. Like the Investment Agreement these documents are inherently incredible. The key point is that the appellant has consistently stated that he has very few assets and has never earned more than £10,000 *per annum* in his life. If that were to be accurate, which I do not accept, it certainly begs the question why TexPark would make a loan of £1.6 million to him let alone the earlier loans of £25,000 or £70,000.

135. If these were genuine documents, by the time the third loan agreement was entered into, TexPark would have known that the “investment” in 107 Myrtle Road had not worked and that the appellant could never have an income stream from it and nor could they. No lender would lend £1.6 million on an alleged security of a property which had an outstanding mortgage. In a statement of assets provided by the appellant to HMRC on 1 March 2018, he stated that the

value of 107 Myrtle Road was £130,000 and that the mortgage balance outstanding was exactly that amount. In any event the £1.6 million consolidated loan agreement simply does not make sense since the whole amount of £1.6 million was to be paid to Soft Security Solutions Limited whereas the alleged debt to them was only £1,570,000. There is no explanation as to why or how the figure of £1.6 million was arrived at.

136. It simply defies belief.

137. As I indicate at paragraph 100 above, the appellant controlled a company called Soft Security Solutions Limited. That may be a coincidence.

138. The appellant has produced a document which purports to be from a company by that name with an address in India. It is dated 30 April 2015, is stamped both “settled” and “paid in full” and, based on an alleged “breach of contract agreement clause 3.9” and claims £1,570,000 compensation from the appellant for “being unable or not delivering services on time by”. It asked for payment by 31 May 2015.

139. One of the many problems with that letter is that, presumably inadvertently, the appellant has produced a letter on the same letterhead and apparently signed by the same person but dated 30 October 2015 with a similar heading but talking about a failure to “complete or not delivering services on time by October 3rd, 2015”. An extra paragraph has been added stating that they had been told that police had arrested the appellant on 8 April 2015 and for that reason he was unable to work. The rest of the letter is the same except that it refers to 3 October 2015 and seeks payment by 31 December 2015. If the monies had been paid in response to the earlier letter, as the stamps on the face of the letter purports to state, there would be no need for the second letter.

140. The obvious other problem is that although there is a contract between the Indian company and the appellant dated 9 June 2013, it has no clause 3.9 in it, it is in very vague terms and it simply says at clause 5 that if there is a breach of a material provision the only obligation would be to “... indemnify against all reasonable damages”.

141. HMRC argue, and I agree with them, that at no time has the appellant given any indication that any part of his trading turnover came from such a company. There is no evidence of work done and no evidence of any breach of terms of any contract.

142. There is no evidence either that TexPark have £1.6 million available to lend and nor is there any evidence that any such sum was paid to Soft Security Solutions Limited.

143. There has never been an explanation as to why there was a gap between the demand for payment and the alleged loan agreement. No correspondence has been produced in that regard.

144. HMRC argue that the evidence of that debt had been fabricated by the appellant and that no deduction should be allowed for any loss allegedly arising from that letter. I agree.

(l) The letters

145. The appellant relies on three letters received from TexPark the first of which was dated 23 March 2014 which stated that they had received £3,000 from the appellant “...towards Furnished Holiday Lettings business (UK FHL)”. I quote that because the appellant used the term UK FHL in his SATRs.

146. The letterhead is also interesting firstly, since it has the same misspelling in the address as was included in the Investment Agreement and secondly because the telephone number is 0131 208 2131. Living as I do in Edinburgh, I am aware that that is not a London telephone number but an Edinburgh telephone number. It is also to be found on a list of telephone numbers which have been reported as complaints about mis-selling.

147. The second is dated 2 April 2015, but says that they had received £38,000 of income from the appellant.

148. The third is dated 21 March 2016 and refers to receipt of £12,000.

149. There is a further letter in the Bundles from TexPark to HMRC dated 15 September 2019. It carries the same letterhead and telephone number as the first three and purports to come from the Chief Executive Officer but he gives the address for TexPark below the letterhead and on the left-hand side. It states that it is “Texpark Investments Limited” and gives the address as being the London address rather than the address on the letterhead and Investment Agreement’s “St John road”. Throughout the letter, until it comes to the signature, he refers to it as Texpark.

150. It is an extraordinary document stating that neither he nor TexPark had embarked on a “campaign of any physical torture” of the appellant. He denied that either he or the company had “seduced, defrauded and tried to drive to suicide” the appellant. It then goes on to say that TexPark had bought and sold the three properties at 67, 68 and 69 Myrtle Road and states that it “agrees taxation and all other liabilities” in respect of the properties.

(m) The London address

151. The appellant produced various vouchers for expenses that he wished to claim for his self-employment. Presumably inadvertently, he had included an e-ticket receipt dated 26 February 2015 which stated that he had paid for flights to and from Glasgow and for hotel accommodation using a credit card. The cardholder was the appellant but the billing address was the London address. Presumably the appellant was operating out of that address as were, at least, Nova IT Consulting Limited.

152. I observe that the witness to the Power of Attorney was the same witness who witnessed the Investment Agreement and was allegedly the Director of Human Resources at TexPark. Quite why a dormant company required such a Director is a mystery.

(n) Conclusion on TexPark

153. I find it incredible that the TexPark documentation would suddenly be found in March 2018. Further it does not sit with any of the earlier explanations offered by the appellant over a period of years. For all the reasons set out above, I find that the TexPark Investment Agreement and the Loan Agreements were all shams and that the appellant was instrumental in their drafting. If TexPark exist then they colluded with the appellant. These documents fall to be disregarded.

(o) The Properties

154. The Land Registry records show that the appellant:

(a) purchased 67 Myrtle Road on 14 December 2012 for £234,000 and it had been sold for £325,000 with money passing hands on 29 May 2015,

(b) purchased 68 Myrtle Road on 1 March 2012 for £207,000 and it had been sold for £300,000 with the price being paid on 28 August 2015,

(c) purchased 69 Myrtle Road on 9 October for £200,000 and it had been sold for £275,000 with the price being paid on 30 June 2015.

155. The Stamp Duty Land Tax records show the same.

156. The appellant had purchased his own home at 107 Myrtle Road on 30 April 2012 for £195,000. Quite how that equates with what he argues is the value many years later at £130,000 is not entirely clear.

157. On 2 November 2016, HMRC wrote to the appellant referring to the June 2014 meeting where he had said that he was the landlord of 107 Myrtle Road which had five rooms and each room was occupied by a family and he had approximately £26,000 from rental income. Copies of the note of meeting had been sent to him for agreement on 12 June 2014 and he had not replied at any stage querying the content.

158. As I indicate above, his 2014 SATR had showed that he had rented out three properties. He had declared rents, expenses and profits of £26,500, £9,200 and £17,300 respectively. The second version of his 2014 tax return, which was captured on 30 July 2014, showed rents, expenses and profits of £20,100, £13,620 and £6,480 respectively. He had also changed the version to state that only two properties had been rented and had indicated that all property income ceased in the 2013/14 year.

159. That date for cessation does not sit well with being a landlord in June 2014 or with his statement that SM was living at 107 Myrtle Road in June 2014. I also observe that a Mr Radanov was apparently living at that address in September 2014 (see paragraph 175 below).

160. The evidence is absolutely compelling that the appellant owned 67, 68 and 69 Myrtle Road. Not only is there the evidence from the Land Registry but there is also the confirmation from London Court Chambers Limited which is clearly connected with the appellant and showed the purchase date and price paid for the properties.

161. Although the appellant denies receiving any rental income it is clear that rental income was received. On the balance of probability he was receiving rental income for all four properties.

162. HMRC have identified payments in his Royal Bank of Scotland bank account from Crystal & Co (which is described as being for 107 Myrtle Road), Your Move and Mr and Mrs Sharma (which is described as being for 68 Myrtle Road) amounting to £60,295 in 2014/15 and £13,529 in 2015/16. There were no payments after October 2015 which coincides with both the demolition of 107 Myrtle Road and the sale of the other three properties.

163. As I narrate in the context of TexPark there is no evidence of monies being paid from the Royal Bank of Scotland account to TexPark and I reject the suggestion TexPark operated that account.

(p) Expenses relating to 107 Myrtle Road

164. The appellant argues that it was he who instructed all of the work on the property and certainly he has produced to HMRC invoices from Fast Builders & Property Management Limited (“Fast”), the first of which was dated 25 May 2013 and was numbered invoice 7 for roof insulation followed by another two invoices dated 9 and 25 July 2013 before invoice number 16 dated 19 September 2013 for foot mats and “Wall painting to complete property”. That presumably marked the completion of the conversion. There is an unexplained schedule headed Investment Agreement with a long list of bills which include the items in the four invoices.

165. There are two invoices both dated 15 July 2015 and numbered 173. The sales rep on each was described as “Simha” and the purchase order number was in both cases, 275. That should not be possible.

166. More pertinently, one of them described the provision of electrical mains and meter relocation, lighting, a washing machine and a kitchen chimney hood fan with duct pipes and installations and lastly the provision of a gaming laptop with a US keyboard at a cost of £850. In stark contrast the other one described the demolition of the studio flats bathrooms, toilets

and kitchen, the demolition of the rear building extension and specifically “Demolishing front pouch plus a canopy”.

167. That is precisely the misspelling that is to be found in the TexPark agreements and the appellant’s correspondence.

168. None of that is consistent with invoice number 156 dated 30 June 2015 which included amongst other things three sets of cooking and kitchen equipment with plates, dishes and crockery and six duvets, 12 pillows and 12 bedsheets. None of those would have been required if demolition was about to be undertaken.

169. There are many other inconsistencies in the invoices but they do not require to be rehearsed.

170. Companies House records show that Fast was incorporated in the name TCS Infotech Ltd, with company registration number 7540645, on 23 February 2011. The Company Secretary was SM and the appellant was the sole director but he resigned on 1 July 2011 and was reappointed as a director on 7 October 2014. The name was changed on 31 July 2014.

171. It is of note that even the first invoice dated 25 May 2013 carried the company registration number but that was more than a year before the name became Fast. Fast has submitted dormant company accounts throughout its existence.

172. HMRC submit that these invoices are not credible. They certainly are not. None of them is deductible. Even if they were genuine it would not be allowable expenditure since it is capital in nature. Furthermore there are non-business items included.

(q) Holiday Inn Hotels Limited

173. The appellant has lodged with HMRC a number of bills which he wishes to claim as expenses relating to accommodation and travel and issued by Holiday Inn Hotels. He has produced invoices totalling £9,419.80 for 2013/14, £16,506.20 for 2014/15 and £3,906 for 2015/16.

174. The first problem with that is that Holiday Inns Hotel Limited was not incorporated until August 2014. Clearly all of the invoices for 2013/14 have been fabricated.

175. Although the appellant denies it, Companies House has a record that he was appointed as a director of the company, which has a registration number of 917460 on 4 September 2014. The relevant form AP01 was submitted by a Mr George Radanov whose address is shown as 1st Floor, 107 Myrtle Road at a time when the appellant’s main residence was 107 Myrtle Road. The registered office is 29 Harley Street which is the same registered office as IP Security and Network Consultancy Limited. There is a very clear connection with the appellant.

176. Until it was dissolved on 3 November 2015, it was dormant.

177. The other issue with the accommodation invoices are that they are quite simply inaccurate. For example, invoice number WB51366456 purports to be dated 1 September 2013 and shows an arrival date of 8 September 2013 at 16:53 and a departure date on 22 September 2013 at noon. It also shows a bill for accommodation on the night of 22 September 2013. It shows that the bill was paid on 7 October 2013. That seems inherently unlikely.

178. Invoice number WB51366457 is also dated 1 September 2013 and shows an arrival date of 22 September 2013 at 17:53 but the first night of accommodation is the following night on 23 September 2013. It records the departure date of 9 October 2013 at noon but again there is an accommodation bill for 9 October 2013. There is a further invoice for the appellant WB51365208 with an invoice date of 1 March 2014 showing an arrival date of 5 March 2014

at 15:19 and a departure date of 17 September 2014 at noon. The accommodation shown on the bill covers the period 5 March 2014 to 12 March 2014 and then bizarrely 13 and 14 March 2014 with accommodation for 13 and 14 September 2014. It states that the total was paid on 15 March 2014.

179. There is an invoice number WB23456921 which purports to show an arrival date on 17 July 2015 at 12:29 with a departure on 2 August 2015 at noon. However, the accommodation included in the bill commences on 18 July 2015 and concludes with a stay on the night of 2 August 2015 with the bill purportedly paid on that date.

180. The last bill I consider here is for three guests with a surname Gahlawat and a home address in Hounslow. The invoice number is WB23364226 and the invoice date is 18 August 2014. The arrival date is shown as 18 August 2014 at 10:10 which is the same as the invoice date and time and a departure date of 17 September 2014 at noon. However, the accommodation is recorded as starting on 2 September 2014 covering the nights until and including 17 September 2014. That does not accord with the departure date. It states that the invoice was paid on 18 August 2014.

181. It can be seen from the print-out produced by the appellant for his 2014/15 tax return that he had claimed the invoice for the guests called Gahlawat in the sum of £8,184 on the basis that “tenant not moved out”. He had claimed the invoice in the sum of £5,220 for the invoice for himself for the accommodation in March 2014. Patently even if it were allowable for business purposes, it would not be allowable in that year.

182. On the balance of probability all of the invoices were fabricated, but even if the expenditure was incurred there is no evidence that it was incurred wholly and exclusively for business purposes.

(r) *Self-employment earnings*

183. Section 33 Income Tax (Trading and Other Income) Act 2005 (“ITTIOA”) states:-

“In calculating the profits of a trade, no deduction is allowed for items of a capital nature”.

184. Section 34(1) ITTIOA provides that in calculating the profits of a trade, no deduction shall be given for expenditure which was not incurred wholly and exclusively for the purposes of that trade.

185. Although the appellant denies being self-employed, his SATR for 2014/15 included £10,000 profit from self-employment and he described his trade “computer trade and service”.

186. HMRC have used the deposits into the appellant’s bank accounts in order to arrive at a figure for turnover when computing the profits of his trade.

187. When HMRC reviewed the bank statements they discovered deposits from Experis Ltd in the sums of £13,072 and £49,035 for 2014/15 and 2015/16 respectively. There were also deposits from Hays Specialist in 2015/16 totalling £26,314. Nothing has been produced from either Hays Specialist or Experis Ltd and I can find no other reference to them in the Bundles.

188. The appellant has not established the source of those funds beyond stating that he acted as an intermediary between those companies and Organon (see paragraphs 32-39 above). Incidentally I observe that the only contract that has been produced with Organon is with IP Security Limited and is dated 5 April 2014. The appellant is not a party to that agreement albeit there is a note on the cover page that reads “IP Security Limited is a client and a sub-contractor of Kieran Upadrastra”. That forms no part of the contract.

189. HMRC have treated those deposits as self-employment income. I agree. The question then is what deductions fall to be allowed against the trading income.

190. The appellant has furnished a letter dated 16 October 2014 from a company called Isola Infotech India Private Limited and purports to charge the appellant a penalty of £15,000 for failing to turn up for work in Manchester on two occasions. The letter is marked as “paid in full”.

191. There is no evidence of payment of the £15,000 and no evidence of any contract or basis for any breach of any agreement. HMRC argue that no deductions should be allowed for that amount and I agree.

192. The appellant has provided documents which purport to be invoices from an organisation called Virtual Office which appears to be the trading name of a company registered in Luxembourg. The amounts invoiced are £3,135.40 in 2013/14, £1,135.40 in 2014/15 and £3,135.40 in 2015/16 and all are marked as payment received. There is no evidence of any payments being made and no evidence that any services were actually provided by Virtual Office and, of course, they cover periods when the appellant denies having any business. HMRC argue that no deduction should be allowed for these costs and I agree.

193. The appellant has submitted documents which purport to evidence business expenses. I have already found that the invoices from Holiday Inns Hotel Ltd are not credible evidence but even if the expenditure was incurred, there is no evidence that it was incurred wholly and exclusively for business purposes.

194. The appellant also provided various other invoices relating to travel expenditure for the period 2013/14 to 2015/16 but again there is no evidence that the costs were incurred wholly and exclusively for business purposes. I agree with HMRC’s submission that no deduction should be allowed.

195. The appellant has provided invoices from O Connell Lodge Nursing of Finglas South, Dublin. Those show carer and nursing costs of £37,865 in each of the years 2013/14, 2014/15 and 2015/16. The care was apparently provided for five hours a day for 365 days of the year and the nursing for two hours a day for 210 days a year, both at 107 Myrtle Road. It specifies a very high level of assistance which includes intimate personal care. On that basis alone the invoices are incredible.

196. Quite apart from the fact that the appellant argued that he stayed with his sister whilst the construction and demolition works were completed, that is quite impossible to reconcile with the appellant’s claims for travel and accommodation. Each of those “Domiciliary Care Services” invoices indicates that payment was made in cash. There is no evidence as to how that might have been funded.

197. HMRC argue that these costs were never incurred but if they were then they were certainly not incurred wholly and exclusively for business purposes. They certainly would not be deductible for business purposes. I find that the invoices were fabricated.

198. Although I have found that the various documents provided by the appellant do not demonstrate allowable business expenditure, I accept HMRC’s argument that it is reasonable that the appellant would have incurred some allowable expenditure in generating his turnover. Their submission is that there should be an allowance of 15% of turnover. They have assessed on that basis.

199. They rely on *Bi-Flex Caribbean Ltd v The Board of Inland Revenue*² (“Bi-Flex”) where Lord Lowry said:-

“The element of guess-work and the almost unavoidable inaccuracy in a properly made best of judgement assessment, as the cases have established, do not serve to displace the validity of the assessments, which are *prima facie* right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right. It is also relevant, when considering the sufficiency of evidence to displace an assessment, to remember that the facts are peculiarly within the knowledge of the taxpayer.”

200. I find that HMRC’s approach is reasonable in the absence of any reliable alternative and therefore those parts of the Closure Notices and the Discovery Assessment that relate to self-employment should be amended to the figures, as varied by HMRC.

(s) *Employment income*

201. I accept the clear evidence from the bank account that the appellant was paid £8,393 by Nova IT Consulting Limited in 2013/14.

(t) *Property income*

202. I accept HMRC’s submission that the taxable profit from income from property should be:-

(a) In 2013/14 it is the £6,480 profit calculated by the appellant in his amended 2013/14 tax return.

(b) In 2014/15 it is the £60,295 of deposits paid into the Royal Bank of Scotland account. HMRC have allowed a wear and tear allowance of £6,096 and that is appropriate. That leaves taxable property income for that year of £54,199.

(c) In 2015/16 it is the £13,529 of deposits paid into the Royal Bank of Scotland account. HMRC have allowed a wear and tear allowance of £1,353 and that is appropriate. That leaves taxable property income for that year of £12,176.

(u) *Interest*

203. Section 369(1) ITTOIA states:

“Income tax is charged on interest.”

204. Section 370 ITTOIA states, that tax is charged on:

“... the full amount of interest arising in the tax year.”

205. Mr Upadrasta’s bank statements for the three years under appeal show the following interest received:

Year	Untaxed interest	Net interest after tax deducted at source
2013-14	£27	Nil
2014-15	£8	£84
2015-16	£97	£23

² 63 TC 515

206. HMRC submit that this interest should have been returned by Mr Upadrasta and that the interest is chargeable under Section 69 ITTOIA. It is.

(v) *Validity of the Disclosure Assessment*

207. Section 29(1) Taxes Management Act 1970 (“TMA”) states that:-

“If an officer of the board or the board discover, as regards any person (the taxpayer) and a year of assessment –

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed or,

(b) that an assessment to tax is or has become insufficient, or,

(c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the crown the loss of tax”.

208. There is absolutely no doubt in this case that the officer discovered a significant loss of tax and had the right to raise the assessment.

209. The assessment was raised not only competently but also timeously since the loss of tax was brought about deliberately by the appellant and as the appellant denies ever having had these sources of income, so HMRC could not have been aware of the true situation.

G. Penalties

210. Paragraph 1 of Schedule 24 Finance Act 2007 states that where a person gives HMRC a document which contains an inaccuracy and the inaccuracy was careless or deliberate, a penalty is payable for each inaccuracy.

211. Paragraph 4 states that for a deliberate but not concealed inaccuracy the penalty is 70% of the potential lost revenue.

212. Paragraph 9 provides for reduction in penalties where a person discloses an inaccuracy. It states that a person discloses an inaccuracy by telling HMRC about it, by giving HMRC reasonable help in quantifying the inaccuracy and by allowing HMRC access to records. A disclosure is unprompted if it is made at a time when the person making it had no reason to believe that HMRC had discovered the inaccuracy. Otherwise it is prompted.

213. Paragraph 10 sets out the relevant penalty percentages for standard, prompted and unprompted disclosure.

214. Paragraph 11 provides that HMRC may reduce the penalty chargeable under special circumstances.

215. The word deliberate is not defined in the legislation but it was considered in *Auxilium Project Ltd v HMRC*³ where the Tribunal said at paragraph 63:-

“In our view, 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 the subject of 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.”

³ [2016] UKFTT 249 (TC)

I agree.

216. There is no doubt that the appellant knew that he was supposed to include self-employed income, income from property, employment income and interest in his tax return.

217. The fact that he attributes all errors to SM does not assist him. It is his obligation to ensure that accurate returns were filed. I was not referred to the case but *HMRC v Katib*⁴ is in point although it was dealing with permission to make a late appeal. The Upper Tribunal said at paragraph 58 that:

“It cannot be the case that a greater degree of adviser incompetence improves one’s chances of an appeal, either by enabling the client to distance himself from the activity or otherwise”.

The Upper Tribunal went on to point out that in such an event, the taxpayer should bear the consequences of the advisers, or in this case, the attorney’s perceived failings, and if he so wishes pursue a claim in damages against him for any loss suffered.

218. As I have found, the evidence clearly shows that the appellant was in receipt of taxable trading income, property income, employment income and interest which was either not reflected at all in his tax returns for the relevant years, or was understated. I agree with HMRC that this was not attributable to careless behaviour or a mistake because the appellant has at all times sought to distance himself from being recognised as receiving the income.

219. I agree with HMRC that the appellant has attempted to reduce the quantum of the omitted taxable income by providing purported evidence of expenditure and deductions which have no credibility or substance.

220. It was clearly deliberate behaviour.

221. On 4 March 2019, HMRC sent a penalty explanation letter to the appellant setting out the inaccuracies and stating that they had applied no reduction for telling, a 10% reduction for helping and a 20% reduction for giving.

222. I do not intend to displace those reductions but consider them to be generous in the circumstances.

223. HMRC did consider the question of special circumstances and I agree with them that there are none.

224. I therefore confirm the penalty assessment in the sum of £26,736.96 being £649.97 for 2013/14, £9,445.73 for 2014/15 and £16,641.26 for 2015/16.

H. Right to apply for permission to appeal

225. 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 SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 09 JUNE 2021

⁴ [2019] UKUT 189 (TCC)