Neutral Citation: [2025] UKFTT 00090 (TC)

Case Number: TC09416

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/13713

INCOME TAX - discovery assessments – deductible expenses

Heard on: 25 November 2024
Judgment date: 24 January 2025

Before

TRIBUNAL JUDGE MCGREGOR
SUSAN STOTT

Between

MR STEPHEN OPOKU-ANOKYE

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Opoku-Anokye

For the Respondents: Ms Victoria Halfpenny, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video). A face to face hearing was not held because a remote hearing was appropriate. The documents to which we were referred are a bundle of 191 pages and further exchanges of correspondence between the parties in the run up to the hearing.

2. 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.

BACKGROUND

3. This appeal had changed considerably over its course. It started as an appeal against discovery assessments and penalties covering 6 tax years. However, by the time of the hearing, the penalties and the assessments related to the first 4 tax years had been withdrawn as HMRC had accepted that Mr Opoku-Anokye had a reasonable excuse.

4. Therefore this decision deals only with the appeal against two discovery assessments:

(1) £1,175 in respect of tax year 2018/19; and

(2) £2,276 in respect of tax year 2019/20.

LAW

5. HMRC have the power to raise a discovery assessment under section 29 of the Taxes Management Act 1970 (TMA 1970).

6. Section 29(1) provides for HMRC to raise an assessment with regards to a taxpayer in a number of circumstances, including, under sub-paragraph (b) where the assessment that the taxpayer has included in their self-assessment return turns out to have been too low. This sub-section reads as follows:

> (1) 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.

7. The ability of HMRC to raise assessments under section 29 TMA is subject to time limits. For the purposes of this appeal, the relevant time limit is set out in section 34 as follows:

> "34(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax or capital gains

tax may be made at any time not more than 4 years after the end of the year of assessment to which it relates.

34(2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment.

8. With regards to employment expenses, the Income Tax (Earnings and Pensions) Act 2003, section 336 provides as follows:

(1) The general rule is that a deduction from earnings is allowed for an amount if—

(a) the employee is obliged to incur and pay it as holder of the employment, and

(b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

(2) The following provisions of this Chapter contain additional rules allowing deductions for particular kinds of expenses and rules preventing particular kinds of deductions.

(3) No deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses).

FACTS

9. The following is a summary of the key facts found:

(1) Mr Opoku-Anokye was an employee for the periods 2018/19 and 2019/20;

(2) He received child benefit in the relevant years;

(3) His adjusted net income exceeded £50,000 and was in excess of his partner's income;

(4) He did not submit a tax return for the relevant years;

(5) A compliance check was opened into his tax position on 8 February 2021;

(6) Discovery assessments were issued on 1 July 2022;

(7) Mr Opoku-Anokye appealed to HMRC in July 2022 and then requested an internal review on 29 August 2022;

(8) HMRC's review upheld the decision on 2 November 2022;

(9) Mr Opoku-Anokye appealed to this tribunal on 26 November 2022; and

(10) During the course of August 2024, HMRC withdrew all the penalties and the assessments relating to earlier periods.

TAXPAYER'S SUBMISSIONS

10. Mr Opoku-Anokye submits that:

(1) The reasonable excuse for the earlier years should also be accepted in relation to the two years remaining under appeal;

(2) Even if that it is not the case, his reliefs and expenses should be taken into account, specifically:

(a) £175 for a chair and £83.94 for a computer monitor that were necessary for him to work from home during the COVID lockdown and were not reimbursed by his employer;

(b) Home working expenses for the period from July 2017 to June 2019 because his employer's office was in Edinburgh and he was a home worker servicing clients based all around the UK;

(c) Home working expenses of £6 per week for the lockdown period as per HMRC's expenses policy at the time without needing to provide additional evidence;

(d) Costs of £400 to attend a conference in July 2018 on Informatics and Semiotics in Organisations. He had presented a paper at that conference and his attendance at the conference was necessary to maintain his professional standing and necessary to fulfil his duties as a sessional lecturer at a University at that time;

(e) Gift aid donations of £50 per month each month of the two years made to the Catholic Diocese of Portsmouth;

(3) The PAYE figures for 2019/20 were wrong and did not tally up with his knowledge and memory of the amounts that he received, albeit that he does not have the specific records; and

(4) He does not accept that it was his responsibility to provide additional evidence to back these up when HMRC are in a position to verify the figures themselves by contacting the charities and employers.

HMRC SUBMISSIONS

11. HMRC submit that:

(1) An officer discovered a loss of tax on 30 January 2021 when he established that Mr Opoku-Anokye had received child benefit in the relevant years and had an adjusted net income that exceeded both £50,000 and his partner's income level in the relevant years, such that the Higher Income Child Benefit Charge should have been paid, but had not been.

(2) Having discovered the loss of tax, the assessments were raised on 1 July 2022.

(3) The assessments were raised within the ordinary time limit of 4 years.

(4) As at the date of those assessments they had been correctly calculated.

(5) Therefore the discovery assessments had been properly and validly issued.

(6) No reasonable excuse or special circumstances can apply in order to prevent the raising of discovery assessments within normal time limits;

12. With regards to the calculation of the tax due in the relevant years, HMRC submits that:

(1) The onus is on the Appellant to claim reliefs and expenses;

(2) He was asked for information relating to these amounts in February 2021 but did not submit any evidence until shortly before the hearing in November 2024;

(3) With regards to claims for gift aid, there is a statutory 4-year window for making a claim which the Appellant has not met and in any event there remains no evidence of payments actually having been made by the Appellant to the charity;

(4) With regards to working from home expenses, Mr Opoku-Anokye did not make any claims through the PAYE team and has not provide evidence that he was entitled to make the claims; and

(5) With regards to his claim for expenses of attending a conference, he has not shown that the conference was necessarily incurred in relation to his employment.

13. HMRC however, acknowledged that it was within the power of the tribunal to take into account additional evidence that had been presented by Mr Opoku-Anokye if it was satisfied that this evidence showed that the calculation of the tax due in the relevant year should be reduced.

DISCUSSION

14. We find that the relevant HMRC officer did make a discovery of a loss of tax and notify the Appellant of it in accordance with section 29 of TMA 1970; and that it was notified within 4 years of the end of the relevant tax year, i.e. within the normal time limits that do not require additional conditions to be met.

15. Therefore, provided the amount of tax due has been appropriately quantified, we find that the discovery assessments are valid.

16. We note Mr Opoku-Anokye's arguments about reasonable excuse. However, there is no defence of reasonable excuse against a discovery assessment in itself. In his case, his earlier reasonable excuse for failure to notify liability was relevant to the earlier discovery assessments as a result of HMRC's need to rely on extended time limits for those earlier assessments. However, this is not relevant for the two remaining years under appeal.

17. We must therefore consider each of the amounts that Mr Opoku-Anokye has submitted should reduce the amount of tax due. We will take each one in turn, but start with the general point concerning where the burden lies as to evidence and validation.

18. In his written and oral submissions, Mr Opoku-Anokye repeatedly referred to the burden on HMRC to validate or check the amounts he was claiming. With respect to the Appellant, this is misguided. HMRC has raised assessments based on the information they have available to them. Mr Opoku-Anokye has brought an appeal to challenge those assessments. Therefore the burden is on him to show that the assessments are wrong, It is not enough for him to make an assertion and expect HMRC to work it out. He must present evidence such that we are satisfied on the balance of probabilities that it should be taken into account in calculating his tax liabilities.

19. On gift aid, we did not see any documentary evidence of the donations Mr Opoku-Anokye claimed and therefore find he had not discharged the burden of proof.

20. With regard to the expenses for his home office, we saw receipts of the expenditure which coincided with the period of compulsory lockdown, being 28 March and 2 April 2020. Mr Opoku-Anokye's oral evidence was that these were incurred wholly, exclusively and necessarily for the purposes of his employment and were not reimbursed by his employer. HMRC did not challenge this. We therefore find that they were deductible expenses under section 336 of ITEPA 2003 for the 2019/20 tax year.

21. With regard to the attendance at the conference, we saw a dated receipt for the payment of £400 for attendance. We also heard from the Appellant as to the reasons for attending this conference in the course of his employment as a sessional lecturer and that the expenses were not reimbursed by his employer. We therefore find that this is a deductible expense in the 2018/19 tax year.

22. With regard to home-working expenses more generally, there are two claims. One in relation to the period from 6 April 2019 to 14 June 2019. HMRC had requested further information to confirm these expenses, but Mr Opoku-Anokye had not provided any and suggested that HMRC could enquire of his former employer. We therefore find that he had

not discharged the burden of proof to show that he could claim expenses of home working during this period.

23. The second claim related to the period of COVID lockdown during 2020. Mr Opoku-Anokye argued that HMRC did not require additional evidence and allowed all employees who were working from home to receive relief of £6 per week without having to provide supporting evidence. However, this dispensation applied only for 2020/21 and 2021/22, whereas the assessment in question concerns tax year 2019/20. Given that no evidence has been provided of his working from home expenses (save for those already dealt with above), we find that Mr Opoku-Anokye has not met the burden of proof for these expenses.

24. With regards to the PAYE information being incorrect, which Mr Opoku-Anokye submits has given rise to a higher income than he believes was received, we do not have evidence to displace the figures used by HMRC to form their assessment. They have stated that they used the information provided by the employers and have provided the evidence from their internal computer systems of what those figures showed. Without evidence to contradict the figures, we cannot alter the calculations.

DISPOSITION

25. We uphold the discovery assessments, subject to adjustments to reflect the expenses for:

(1) £175 for a chair and £83.94 for a computer monitor in the tax year 2019/20; and

(2) £400 for a conference in the tax year 2018/19.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

26. 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.

Release date: 24th JANUARY 2025