



TC02438

Appeal number: TC/2012/06850

INCOME TAX – appeal against a closure notice which added £19,400 to the appellant’s profit for tax year 2004/05 – appellant claimed to have misunderstood implications of a meeting and not to have signed any agreement – appellant produced documents showing that £19,400 was in respect of expenses for contractors supplied by agency – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JAMES EDOH

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE SANDY RADFORD
 MR JULIAN STAFFORD**

Sitting in public at Bedford Square, London on 20 September 2012

The Appellant in person

Ms K Weare, Officer of HMRC, for the Respondents

DECISION

1. The appellant applied for permission to make a late appeal against HMRC's
5 conclusion, in closing their enquiries into the appellant's tax return for 2004/05, that
£19,400 which the appellant had claimed as expenses should be added to his profits.

2. HMRC opposed the application on the grounds that the appellant did not have a
reasonable excuse for the late appeal. The appeal should have been made by 22 June
2012 and was made on 1 July 2012. The appeal was made late as a result of the
10 apparent late arrival of a letter from HMRC dated 22 May 2012 a copy of which the
appellant had to request. The Tribunal considered that this was a reasonable excuse
and the appellant is hereby granted permission for a late appeal.

3. HMRC claimed that the Tribunal did not have jurisdiction to reopen the appeal
which they claimed had been determined by agreement under Section 54 of the Taxes
15 Management Act 1970.

Background and facts

4. An enquiry was opened into the appellant's tax return for 2004/05 in December
2006 and a schedule of information was requested from the appellant by HMRC.

5. A meeting was held with the appellant on 26 February 2007. The meeting was
20 conducted by Mrs A. Richards of HMRC. At the meeting the appellant confirmed that
his accountant had completed his tax return and she had made some mistakes. His
original tax return for the year had been mislaid by the HMRC processing office and
when his accountant sent in a copy she had copied the wrong accounts.

6. A note was made of the meeting but the appellant refused to agree or sign the
25 notes as he stated that several errors had been made. Later he sent in what he stated
was a copy of the original correct return.

7. Further meetings and correspondence followed and finally on October 2010 the
appellant wrote to HMRC stating that when he had reviewed the revisions made by
HMRC to his profits for 2003/04 he had noted that they had still not taken into
30 account the £19,400 which he had paid to subcontractors for the work carried out on
the business IT equipment.

8. HMRC replied stating that they could not understand why the appellant was
querying figures which he had agreed eight months previously.

9. In evidence the appellant stated that this had been a misunderstanding and that
35 he had never signed any agreement or agreed anything in writing. He had desperately
been trying to sort the situation and at the time of a meeting with HMRC on 20
January 2009 he had not understood the implications of verbally agreeing HMRC's
figures in order to avoid prolonging the matter.

10. Further to receiving a note of the meeting from HMRC the appellant sought professional advice and in February 2009 the appellant wrote to HMRC and confirmed that he did not accept HMRC's treatment of the £19,400.

11. A closure notice in respect of the 2004/05 tax year was issued in June 2009.

5 12. A penalty was imposed by HMRC in respect of the tax return on 28 October 2009.

10 13. On 30 November 2009 the appellant wrote again to HMRC reiterating that he had been deprived of his rights to allow the £19,400 as expenses because the PAYE scheme could not be traced. He pointed out that Mrs Richards of HMRC had been prepared to accept the payment as expenses and it was only Mr Dudhia of HMRC, who had taken over the enquiry, who was not in acceptance of the true position.

15 14. Further letters and telephone calls followed until 12 January 2012 when the appellant wrote to HMRC complaint's department again stating that whilst the other matters had been agreed he still did not accept the addition of the £19,400 to his profits for the year.

15. On 22 May 2012 HMRC wrote to the appellant claiming that the appeals had been formally determined and that the appellant had written to the Tribunal on 4 February 2010 stating that the appeals were settled and the matter was closed.

20 16. The appellant produced to the Tribunal a bundle of documents concerning the £19,400. There was a letter from Techdata Services dated 12 August 2010 which confirmed that when given work from clients like the appellant the job was contracted out to Techdata Services's sub-contractors who acted as independent employees who took care of their own tax affairs. Techdata Services reminded the appellant that their invoices clearly stated that the charges were for IT works carried out on the
25 appellant's computers. The invoices produced to the Tribunal confirmed this.

17. The appellant confirmed that all these invoices had been given to Mrs Richards at a meeting held on 11 January 2008 when Mr Mohammed had attended on his behalf.

Appellant's Submissions

30 18. The appellant submitted that he had not signed any agreement. He had tried to clear any tax that was rightfully due but had not understood the implications of this.

19. The appellant submitted that much of the confusion had arisen from HMRC losing his 2004/05 return and his accountant compounding the confusion by copying the wrong accounts when resubmitting a copy return.

35 20. He submitted that as a result of losing his previous accountant he had been forced to try and sort out the matter himself and whilst Mrs Richards had accepted the £19,400 as expenses Mr Dudhia had not. Mr Mohammed had produced the relevant

invoices to Mrs Richards and she had gone through them all and said that she would copy and return them.

21. The appellant submitted that it was not reasonable for HMRC to amend the 2003/04 return as a result of the 2005 enquiry.

5 **HMRC's Submissions**

22. HMRC submitted that the Tribunal did not have jurisdiction to re-open the appeal as it had been determined by agreement.

23. HMRC submitted that the 2003/04 return was based on agreed accounts as amended and the £19,400 had not been added back as wages.

10 24. HMRC submitted that for 2004/05 HMRC had used adjustments which they thought were agreed.

25. HMRC submitted that the burden of proof was on the appellant in respect of the assessments and on them in respect of the penalty.

Findings

15 26. We found that as the appellant was unrepresented the Tribunal was bound to observe particularly carefully Rule 2 (1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that the overriding objective was to deal with cases fairly and justly.

20 27. We found that throughout the bundle of documents produced to us the appellant repeatedly claimed that the £19,400 was in respect of the expense of the work done on his computers.

28. We found that the invoices were evidence that this was so and the letter from Techdata Services confirmed that their sub-contractors who had worked on the computers were responsible for paying their own tax.

25 29. Whilst we accept that on 4 February 2010 the appellant wrote to the Tribunal stating that the matter was settled we also found that the appellant was misled to a degree by Mr Dudhia and was of the belief that the invoices had been accepted. However once he took professional advice he was able to understand his true position.

30 30. We found him to be honest and sincere in giving evidence and that he had not in fact signed any agreement under Section 54 of the TMA. We found that as a result of this it was extremely doubtful that the appeal was actually determined by agreement.

31. We found that it would be neither fair nor just to allow an unrepresented appellant to end up paying far more tax than was due as a result of a misunderstanding, his confusion and pressure from HMRC.

32. We found that the appellant had proved that it was incorrect to add the sub-contractors fees to his profit.

33. We found that the penalty should be reduced to reflect the fact that the tax owed had been over estimated by HMRC.

5 **Decision**

34. We decided that the appeal should be allowed in respect of the £19,400 and that this amount should be deducted from the appellant's profits for tax year 2004/05 and added to his expenses for that year and that any resultant adjustment to his 2003/04 adjustment should be made.

10 35. As it has been decided that the additional amount of tax owed should be reduced we decided that the penalty should be reduced to reflect this.

15 36. 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.

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**SANDY RADFORD
TRIBUNAL JUDGE**

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RELEASE DATE: 18 December 2012