Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand down is deemed to be 25 August 2020 at 10.00 am

Neutral Citation Number: [2020] EWHC 2275 (Ch)

Case No: PT-2020-000259

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
PROPERTY TRUSTS AND PROBATE LIST

7 Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 25/08/2020

Before :

MASTER KAYE

- -

Between :

ALLAN FIRTH WEBSTER	**Claimant**
- and -	
Claim issued without naming a Defendant under CPR Part 8.2A pursuant to the Order of Master Kaye dated 19th March 2020	**Defendant**

- -
- -

Robert Arnfield (instructed by **Mills & Reeve LLP**) for the **Claimant**

Remote Hearing date: 10 August 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MASTER KAYE

Master Kaye :

1. This is the Claimant Mr Webster's claim for rectification of his electronically submitted tax return for the tax year 2016/2017.

Brief Outline

2. The Claimant says that when completing his tax return, in error, he included the figure of £400,000 rather than £800,000 in the charitable giving section. For tax relief purposes he had intended to claim tax relief on these payments as gift aid payments made after 5 April 2017 but to carry them back and treat them as if they had been made in the previous tax year i.e. 2016/2017.

3. Having later realised he had made an error he sought to amend his 2016/2017 tax return to reflect the figure of £800,000 rather than £400,000.

4. According to the closure notices issued by HMRC dated 26 June 2020 as a consequence of this error the Claimant is now liable to pay an additional sum of approximately £215,000 by way of additional tax, penalties, and interest for the tax years 2016/2017 and 2017/2018. This sum includes the tax liability on the entirety of the £800,000 donation. The Claimant says this is a draconian and disproportionate outcome and seeks to rectify his tax return.

5. The claim was issued on 24 March 2020 without naming a Defendant and the Claimant was directed to give notice to HMRC after the claim was issued allowing HMRC an opportunity to acknowledge the proceedings and participate. HMRC neither acknowledged service nor sought to participate in the claim.

6. The claim is supported by the Claimant's first witness statement dated 24 March 2020 and his updating witness statement dated 3 August 2020.

7. Whilst HMRC were not named as Defendant, they were sent a draft of the proceedings on 2 October 2019 and invited to consent to being a party to the claim. Mr Uddin (Higher Officer, Wealthy/Mid-sized Business Compliance) responded on behalf of HMRC on 17 October 2019. Having reviewed the draft claim he indicated that the proposed application was not something that HMRC could be party to and, in his view, the issues between the Claimant and HMRC should be dealt with through the Specialist Tax Tribunal. Mr Uddin indicated that he would be arranging to issue a closure notice.

8. On 3 March 2020 Mr Uddin wrote on behalf of HMRC saying:

> "As discussed I intend issuing a closure notice…As it stands there is an open check and not currently an appealable decision, as such we cannot be party to any proposed applications outside the formal process within which we are obliged to operate."

9. On 26 June 2020 HMRC issued closure notices in respect of each of the 2016/2017 and 2017/2018 tax year. Unless the Claimant appealed the additional tax, penalties and interest would have been payable on 27 July 2020.

10. On 21 July 2020, the Claimant's solicitors gave formal notice to HMRC of the Claimant's intention to appeal against the conclusions reached by HMRC both in relation to the Gift Aid carry back claim and the penalties and interest. In addition, they reminded HMRC of these proceedings in which they sought rectification of the tax return and the date of this hearing. They sought a postponement of all payments.

11. I have considered and taken into account the two witness statements of the Claimant and the submissions of Mr Arnfield both written and oral. As this was a disposal hearing the Claimant's evidence is untested.

Background

12. The Claimant's wife Christine died on 4th August 2016. In her memory he established a fund (the Christal Foundation) with a charity (the Community Foundation for Lancashire & Merseyside ("the Charity")).

13. In the tax year 2016/2017 the Claimant sold his entire share capital in Arizonaco Limited and Portall Travell Limited and realised gains of £5.3 million from the sale of those business interests.

14. In the next tax year, 2017/2018, on 4 August 2017 (the anniversary of Christine's death) he made the donation of £800,000 to the Charity. The donation of £800,000 was the initial endowment intended to finance projects (primarily in Burnley) including the support of children and young people from disadvantaged backgrounds, people with mental health issues and people with disabilities.

15. The Claimant explains that although the donation was made in the 2017/2018 tax year he was aware from his limited knowledge of tax, and as confirmed by his financial adviser, that he would be able to treat the payment as made in 2016/2017 for Gift Aid purposes. Exhibited to the Claimant's first witness statement is a Gift Aid Declaration confirming a donation of £800,000 to the Charity. The Gift Aid Declaration had been annotated to specify that it was in respect of the 2016/2017 tax year. The Gift Aid Declaration makes it clear, on its face, that it is the tax payers responsibility to pay the tax attributable to the Gift Aid donation if they have not paid enough income tax or do not have sufficient gains to cover the gift aid on donations in the relevant tax year. There is an acknowledgment of the donation from the Charity confirming that they would be applying for Gift Aid in respect of the donation.

16. The Claimant explains that it was important that he was able to treat the payment as being made in 2016/2017 when he had significant income and gains as his position in 2017/2018 was substantially different and insufficient to support a donation with Gift Aid of such a significant sum.

17. The Claimant explains that he was using a piece of software called Taxcalc to assist with the calculation of his tax liabilities. He explains that he had initially considered making a charitable donation of £400,000 and put this figure into Taxcalc. He later changed his mind and made a donation of £800,000 on 4 August 2017.

18. He explains that as a result of the significant gains he had made selling his businesses and the use of Capital Gains Tax Entrepreneurs Relief that whether he donated and carried back £400,000 or £800,000 it did not make any difference to his personal tax

position. The tax benefit to the Charity of the donation of £800,000 being subject to Gift Aid was its ability to claim back £200,000, which it did.

19. On 28 November 2017, the Claimant submitted his tax return for 2016/2017 electronically. Box 8 on page TR4 (as subsequently printed) contains the figure £400,000. The Claimant explains that he often slotted figures into Taxcalc but had forgotten to change/update the figure from £400,000 to £800,000 when he made the donation to the Charity in August 2017. He explains that as his personal tax position was unaffected, he did not question the calculation produced by Taxcalc when he submitted his tax return.

20. The Claimant does not explain how he subsequently identified the error in early 2018. He submitted an amended tax return on 9 February 2018. He notes that Taxcalc automatically treated the changes as an amendment. The amended tax return now included the figure of £800,000. At the same time, he sent an email to HMRC explaining that it was a transposition error and a genuine mistake not an amendment. He does not say whether he sought any advice prior to taking this step.

21. He spoke to a Liam Krumins at HMRC who explained that HMRC might raise an inquiry later but, says the Claimant, said that he did not see it as a problem. He says that he is sure that is what Mr Krumins said because he subsequently emailed his financial adviser telling her that.

22. In about November 2018 HMRC opened an enquiry under S9A of the Taxes Management Act 1970 (TMA) in relation to both the Gift Aid relief and his shares in Arizonaco. The Claimant was surprised when he was contacted by HMRC who made it clear that the Gift Aid tax relief claim could only be made on the original tax return.

23. The consequences for the Claimant were significant. Section 426 Income Tax Act 2007 ("ITA 2007") allows a taxpayer to carry back a donation to the previous tax year. Section 426 ITA 2007 refers throughout to "a gift" and not to part of a gift. HMRC's position subsequently set out in their letter of 1 March 2019, was that tax relief was denied entirely unless the amount of the donation and the tax return entry correspond exactly.

24. Section 426(6) ITA 2007 requires an election to be made,

> "(a) on or before the date on which the individual delivers a return for [the previous tax year] ... and
> (b) not later than the normal self- assessment filing date ..."

25. From the moment the Claimant filed an incorrect tax return on 28 November 2017 he fell foul of S426(6)(a).

26. As Mr Arnfield noted HMRC's position on timing is supported by *Cameron v HMRC* [2010] UKFTT 104 (TC) ("*Cameron*"). The Claimant now accepts that *Cameron* establishes the principle that a Gift Aid carry-back election must be made in an original and not an amended tax return.

27. Section 9ZA Taxes Management Act 1970 ("TMA 1970") permits a taxpayer to amend a tax return. However, this does not have retrospective effect.

28. The Claimant having taken advice responded to HMRC's inquiry in January 2019. On 1 March 2019 Mr Uddin sent a detailed letter in which he explained that the original claim for Gift Aid relief was incorrect and any subsequent amendment to carry back Gift Aid would be invalid. Thus, on amendment HMRC treated the charitable donation as if it were £0 in the tax year 2016/2017 and the donation was treated as being made in 2017/2018.

29. Mr Uddin sought further information from the Claimant to enable him to consider the position in relation to the appropriate level of penalties. He asked the Claimant to provide information about the events leading to submission of the incorrect tax return. In particular, he sought an explanation of what checks were carried out by the Claimant before signing and submitting the tax return to ensure it was correct and complete and whether the Claimant had sought any professional advice in relation to any matters he was unsure about. He provided the Claimant with an opportunity to provide any other information that the Claimant considered would be relevant to the consideration of the penalties to be applied.

30. The evidence provided to the court does not include the response given to Mr Uddin only his conclusions, which are set out in his letter of 20 March 2020. For the purposes of calculating the penalty due from the Claimant having considered the response he received, Mr Uddin concluded that the error arose from a failure to take reasonable care in the preparation of the tax return and classed it as "Careless" under paragraph 3 Schedule 24 Finance Act 2007.

31. Taken together that leaves the Claimant in a difficult position. He made a Gift Aid Declaration enabling the Charity to reclaim tax and as a consequence of the error in the original tax return is now liable as the tax payer for the Gift Aid claimed by the Charity as he had insufficient income and gains in the 2017/2018 tax year.

32. It was submitted on behalf of the Claimant that there was no financial advantage intended for the Claimant by making the Gift Aid Donation given the gains he had made in the 2016/2017 tax year. However, if the claim to rectify the tax return were now successful there would now be a fiscal advantage for the Claimant.

Submissions and Discussion

33. Mr Arnfield acknowledged that he could not cite any reported case where a tax return had been rectified but submitted in that in the absence of any other means of correction (under a statutory scheme or otherwise) the court's power to rectify was, in principle, available.

34. This is an unusual application for rectification. Rectification is an equitable remedy. An equitable remedy is a discretionary judicial remedy founded on fairness and justice.

35. Mr Arnfield submits that in order to rectify the Claimant's tax return the court must be satisfied on the following points.

(i) The nature of the error and the exact intended correct figures.
(ii) That rectification can extend to a unilateral instrument.
(iii) That rectification can extend to an electronic instrument or document.
(iv) That there is no general or specific prohibition on rectification of tax returns.
(v) That this is the (or an) appropriate forum in which to decide the matter.
(vi) As a matter of discretion there is no reason to refuse rectification if other conditions are satisfied.

Nature of the Error

36. The Claimant's evidence is that the error was a non-deliberate error caused by him failing to update the amount of the donation made to the Charity in Taxcalc in about August 2017. He compounded this by not noticing the error when completing, signing, and submitting his tax return in November 2017.

37. The Claimant submits that there is sufficiently strong evidence (16-022 Snell's Equity (34th edition 2019)) ("*Snell"*) of the necessary error and the intended figures for example, the Gift Aid Declaration. Whilst it is acknowledged by Mr Arnfield, that the Claimant's evidence has not been tested in cross-examination he submits that:

(i) There was no financial advantage intended for the Claimant at the time of the error – albeit there is now as HMRC are pursuing the Claimant himself .
(ii) There was no logic or reason in entering anything other than a figure of £800,000 as 2016/17 income and gains were amply sufficient to cover the entire donation.
(iii) HMRC does not appear to dispute the Claimant's explanation.

38. The document which the Claimant seeks to rectify is his own tax return. I agree that the nature of the error is clear. The Claimant included the figure of £400,000 not £800,000 in the relevant box in his tax return and upon discovering his error sought to amend his tax return without it being treated as an amendment in the statutory sense. As is now accepted by the Claimant the incorrect original tax return and the amended tax return do not enable him to obtain the benefit of the Gift Aid tax relief. The moment he filed an incorrect tax return he was no longer able to obtain Gift Aid Relief pursuant to S426 ITA 2007.

39. The Claimant's position would not be altered by rectification other than in relation to his own tax liability. The only party adversely affected is HMRC, but they are also the only other party with any interest in the claim to rectify the tax return.

40. The Charity, the beneficiary of the donation, is not out of pocket as a consequence of the error and has no interest in these proceedings or the Claimant's wish to rectify his tax return. As was made clear on the Gift Aid Declaration completed by the Claimant, any adverse tax consequence was that of the taxpayer not the Charity to whom the donation had been made. The only beneficiary of any claim for rectification is therefore the Claimant who is seeking to gain a fiscal advantage in light of the closure notice issued by HMRC.

41. It seems clear based on the Claimant's evidence, which I have no reason to doubt, that the Claimant made an error in the completion of his tax return.

42. S8 TMA sets out a statutory requirement for a taxpayer to file a tax return. Pursuant to S8 the tax return so filed should be correct and complete to the best of the taxpayer's knowledge.

43. I have not been provided with the explanation given to HMRC for the error in the tax return. I have had the benefit of the Claimant's witness evidence. His explanation for the error is that he did not change the figures for the donation to the Charity in the Taxcalc programme. He says that because his personal tax calculation remained unchanged, he did not question the calculation provided by the Taxcalc programme. The suggestion appears to be that he printed or otherwise reviewed only the tax liability figure on the tax return prior to filing. The Claimant's tax return is exhibited to his witness statement. It is not a particularly long or complex document. The impression given is that he did not check the tax return before filing it. Given the Claimant's evidence about the importance of being able to treat the donation as being made in 2016/2017 for tax purposes that is surprising. Had he read the tax return before submitting it to ensure that his declaration that it was correct and complete to the best of his knowledge was accurate as required by S8 TMA, it is difficult to imagine he would not have spotted the error in the Gift Aid box where he had included £400,000 not £800,000 given the importance to him. It is not a small error.

44. As I have noted HMRC considered the error to fall within the category of carelessness pursuant to schedule 24 of the Finance Act 2007. I cannot disagree with that analysis on the evidence before the court.

45. If the Claimant completed his tax return in a way that does not reflect the relief he intended to claim that was his error. To my mind an error arising from carelessness in circumstances where the Claimant signed a declaration saying that the tax return was to the best of his knowledge correct and complete is not one that ought to engage the court's sympathy nor the exercise of its discretion.

Unilateral Instrument

46. Mr Arnfield relies on 16-021 *Snell* which he says indicates that it is settled that a unilateral instrument can be rectified.

47. Whilst Mr Arnfield argued that there was no general or specific prohibition on rectification of tax returns. He did not engage in any analysis of what the nature of a tax return was and whether it was truly a unilateral instrument capable of engaging the court's equitable jurisdiction. He simply submitted that it was a unilateral instrument and rectification was not prohibited.

48. I accept that a unilateral instrument in principle may be susceptible to a claim for rectification (*Snell 16-021)*. However, the types of documents identified in *Snell* are, to my mind, qualitatively different from a unilateral tax return submitted by a taxpayer as a consequence of a statutory requirement to do so.

49. As I have noted the beneficiary of the donation, the Charity, has had the full benefit of the Gift Aid Declaration. It seems to me that the more likely candidate for a unilateral instrument which might have fallen within the scope of rectification would be the Gift Aid Declaration itself which is the document by which the donation is recorded. The tax return simply records the Claimant's claim to tax relief in relation to that donation

and seeks to utilise the provisions of S426 to carry it back and take the benefit in the previous year. Further and in any event the submission of such a tax return is on the basis that it includes a declaration that it is correct and complete.

50. I am not persuaded on the basis of Mr Arnfield's submissions that I can safely conclude that a tax return is a unilateral instrument capable of rectification and/or is the right unilateral instrument. However, even if it were, conceptually, a document which was capable of rectification in principle, I would refuse rectification in any event in this case for the reasons set out below.

Electronic Instruments

51. Mr Arnfield says that he has not identified any reported case where an electronic instrument has been rectified or held capable of rectification. He submits that as a matter of principle there should be no bar to rectification of an electronic instrument for the following reasons:

(i) Rectification is an equitable remedy and should not in principle be unable to evolve and develop to address changes in communication and methods of transaction.

(ii) By analogy it appears that a requirement for "writing" can be satisfied by electronic communication and relies on the following in support:

(a) The wide definition of "writing" at sch.1 Interpretation Act 1978. Mr Arnfield submits that the requirement is visibility and not tangibility.

(b) At 5-006 to 5-009 Chitty on Contracts (33rd edition 2018 supplemented to 2019) there is a discussion of electronic communication in the context of contracts. Mr Arnfield submits that if electronic communication suffices to satisfy requirements for writing in a contractual context then there is no basis or reason to draw a distinction between tangible instruments and electronic instruments for the purposes of rectification.

52. It seems to me that in principle an instrument or document which is created electronically is susceptible to rectification subject to any statutory or other requirement that the document or instrument must be made in a particular form or executed in a particular way. It is the underlying nature of the document or instrument with which the parties and the court would need to grapple.

Prohibition and Forum

53. Mr Arnfield has been unable to identify any reported cases where tax returns (electronic or otherwise) have been rectified. Nonetheless he submits that there is no general prohibition.

54. He argues that in most contexts the taxing legislation provides its own code and timing requirements for amendment and correction of returns. Section 9ZA TMA 1970 being one example. If there were a specific statutory provision setting out a mechanism for amendments and correction (including as to timing) Mr Arnfield accepts that the possibility of rectification may be excluded by implication. However, he argues that the anomaly identified in *Cameron* means there is no scheme for

amendment in relation to Gift Aid and as such the statutory scheme does not provide its own code in this respect.

55. He argues further that as a general proposition the court should be slow to conclude that equitable remedies are excluded by implication relying on [27] and [28] *Marley v Rawlings* [2014] UKSC 2 [2015] AC 129 in which Lord Neuberger made a passing reference to the possibility of rectification being available even where there is express statutory provision. Mr Arnfield therefore submits that rectification should be available in principle unless clearly and unequivocally prohibited or qualified. However, read in context I do not interpret Lord Neuberger's comments at [27] and [28] to do more say that in the absence of a statutory provision (subsequently enacted by S20 of the Administration of Justice Act 1982) he would have held as a matter of common law that a will could be rectified. It does not therefore assist Mr Arnfield.

56. In the context of s.426 ITA 2007 Mr Arnfield argues that there is no applicable statutory scheme for correction or amendment. He submits that there appears to be no logical justification for this approach.

57. His starting point is to distinguish *Cameron*. He says that rectification was not argued in *Cameron* and would not have assisted in that case in any event on the facts. In *Cameron,* the donation was made (and the charity created) after the tax return was submitted. Mr Arnfield argues that the position in this case can and should be distinguished from *Cameron*.

58. However, it seems to me that *Cameron* is illustrative of the Tax Tribunal's approach to Gift Aid carry back claims. In *Cameron* Mr Cameron sold a large part of his farming assets in the tax year ending 5 April 2006. He wanted to set up charitable trusts.

59. He was advised that if he made a Gift Aid donation in 2006/2007, he could carry it back to the previous tax year and obtain Gift Aid relief against his gains.

60. He was very prompt in submitting his tax return in August 2006. It was only at that point that that his advisers started to set up the charitable trust, which was eventually registered by January 2007. Mr Cameron made his donation of £936,000 in January 2007. He submitted an amended return for 2005/2006 seeking carry back relief under S.98 Taxes Act 2002 (Mr Arnfield accepts that the material wording is the equivalent of S426 ITA 2007).

61. Charles Heller QC concluded in *Cameron,* following an analysis of the relevant statutory provisions, that a Gift Aid carry back claim could only be made in an original tax return. He concluded in Mr Cameron's case that whilst it was an odd outcome it was not absurd, repugnant, or inconsistent.

62. Mr Arnfield seeks to differentiate the *Cameron* case on the basis that Mr Cameron had not made his Charitable donation until sometime after he filed the relevant tax return whereas the Claimant had made his donation in full and completed his Gift Aid Declaration some months before the completion of his tax return. In the Claimant's case he says it was just a transposition error after the event whereas in *Cameron* the donation itself was not made until after the tax return had been submitted.

63. Whilst at [29] in *Cameron* the effect of the legislation is described as "odd" but "neither absurd, repugnant, or inconsistent" he submits that this is insufficient to oust the possibility of rectification. Rectification allows the court to address what he says is an unjust and capricious result.

64. Mr Arnfield argues that HMRC has not suggested that there is any jurisdictional issue and that their e-mail of 17 October 2019, on his analysis, suggests that HMRC accept that this claim for rectification can at least be made notwithstanding the possibility of future proceedings in the Tax Chamber of the First-tier Tribunal. Mr Arnfield submits that this is correct as tax is merely the context of this application and not the substance.

65. I do not agree with Mr Arnfield. It is clear that Mr Uddin believed that the Claimant should be utilising the existing statutory regime to challenge the closure notice once issued. It is true that Mr Uddin did not engage with the rectification proceedings but he makes it clear in both his letter of 17 October 2019 and 3 March 2020 that any dispute or challenge should be raised within the statutory regime under which he was operating.

66. Mr Arnfield accepted that the possibility of rectification might be excluded by implication if there were statutory provisions setting out a mechanism for amendments and correction.

67. I referred Mr Arnfield to the decisions of Mr Justice Warren and the Court of Appeal in *Knibbs and ors v HMRC* [2018] EWHC 136 (Ch) and [2019] EWCA Civ 1719. One of the claimants, Mr Barrett had sought to utilise the carry back Gift Aid provisions. The factual circumstances of the case are not relevant.

68. Mr Justice Warren carefully examined the statutory framework in relation to the Gift Aid provisions and formed a provisional view that Parliament had laid down a clear regime for Gift Aid, which could not be displaced by other general provisions within the TMA (which is what Mr Barrett sought to do). Mr Arnfield accepted that this was unhelpful to his argument.

69. At [129] Mr Justice Warren characterised the election to carry back in relation to a Gift Aid Declaration not as the claim for relief itself but simply as an election that the claim for relief should be treated as if made in the prior year. He analysed S426 such that the relief itself resulted from the provision of the Gift Aid Declaration (to the Charity in this case) which rendered the gift a qualifying donation allowing the tax payer to take the benefit of the increases in basic and higher rate limits for tax purposes. To my mind this tends to reinforce my preliminary view that the relevant unilateral instrument, if rectification were available at all, would be the Gift Aid Declaration itself.

70. Mr Justice Warren in *Knibbs* was satisfied that Gift Aid had its own statutory regime, which could not be displaced. As noted by Charles Heller QC in *Cameron* whilst an election under [S426] may not be made in an amendment to a return that was not an absurdity or repugnant even if there is no clear policy reason for it.

71. In *Knibbs* one of the issues to be determined was whether it was open to Mr Barrett or the other claimants to pursue proceedings at all where there existed a statutory scheme, which they had not exhausted. Mr Justice Warren concluded that Mr

Barrett's appropriate remedy was to operate the statutory scheme that existed, and his Part 7 claim should be struck out as an abuse of process.

72. That view was endorsed by the Court of Appeal at [17]-[18]:

> "17. It is well established that if Parliament has laid down a statutory appeal process against a decision of HMRC, a person aggrieved by the decision and wishing to challenge it must use the statutory process. It is an abuse of the court's process to seek to do so through proceedings in the High Court or the County Court. In *Autologic Holdings plc v Inland Revenue Commissioners [2005] UKHL 54, [2006] 1 AC 118* , Lord Nicholls of Birkenhead, giving the majority judgment, said:
>
> "11. In resolving this question of jurisdiction the starting point is to note two basic principles. The first concerns the exclusive nature of the appeal commissioners' jurisdiction to decide certain types of disputes arising in the administration of this country's tax system. The present disputes concern claims for group relief. The way a taxpayer claims group relief depends on whether the claim relates to an accounting period before or after 1 July 1999. Before that date the corporation tax (pay and file) system was in force. This has now been replaced by the corporation tax (self-assessment) system. For present purposes this difference is immaterial. What matters is that, whichever system is applicable, an assessment which disallows a group relief claim cannot be altered except in accordance with the express provisions of the tax legislation. Statute so provides: see, in respect of the pay and file system, section 30A of the Taxes Management Act 1970 and, in respect of the self-assessment system, paragraphs 47(2) and 97 of Schedule 18 to the Finance Act 1998 . Further, the statutory code makes its own provision for appeals. Under both the 'pay and file' system and the self-assessment system a taxpayer has a right of appeal to the appeal commissioners against assessments of tax, including amendments made by the revenue to a taxpayer's tax return. The appeal commissioners' findings of fact are final. In appropriate cases a further appeal lies to the High Court by way of case stated on a point of law. Where the appeal commissioners reduce the amount of an assessment, any overpaid tax must be repaid to the taxpayer, with a repayment supplement by way of interest as provided in section 825 of the ICTA .
>
> 12. Clearly the purpose intended to be achieved by this elaborate, long established statutory scheme would be defeated if it were open to a taxpayer to leave undisturbed an assessment with which he is dissatisfied and adopt the expedient of applying to the High Court for a declaration of how much tax

> he owes and, if he has already paid the tax, an order for repayment of the amount he claims was wrongly assessed. In substance, although not in form, that would be an appeal against an assessment. In such a case the effect of the relief sought in the High Court, if granted, would be to negative an assessment otherwise than in accordance with the statutory code. Thus in such a case the High Court proceedings will be struck out as an abuse of the court's process. The proceedings would be an abuse because the dispute presented to the court for decision would be a dispute Parliament has assigned for resolution exclusively to a specialist tribunal. The dissatisfied taxpayer should have recourse to the appeal procedure provided by Parliament. He should follow the statutory route.
>
> 13. I question whether in this straightforward type of case the court has any real discretion to exercise. Rather, the conclusion that the proceedings are an abuse follows automatically once the court is satisfied the taxpayer's court claim is an indirect way of seeking to achieve the same result as it would be open to the taxpayer to achieve directly by appealing to the appeal commissioners. The taxpayer must use the remedies provided by the tax legislation. This approach accords with the views expressed in authorities such as *Argosam Finance Co Ltd v Oxby (Inspector of Taxes) [1965] Ch 390* , *In re Vandervell's Trusts [1971] AC 912* and, more widely, *Barraclough v Brown [1897] AC 615* ."
>
> 18. In those cases where HMRC had opened an enquiry, the approach re-affirmed in *Autologic* requires the claimants to pursue appeals to the FTT and renders any attempt to litigate their liability to tax or their right to a repayment in Part 7 or 8 civil proceedings an abuse of the court's process."

73. Whilst this was not a point raised in these proceedings, not least because HMRC did not participate, it seems to me that I would be bound by the decisions of the Court of Appeal in *Knibbs* and the House of Lords in *Autologic* and that fundamentally these proceedings were flawed from the outset and would have been susceptible to being struck out as an abuse of process.

74. However, and in any event, I am reinforced in my view about the availability of rectification in the circumstances of this case by the decisions in *Knibbs.* I am satisfied that there is a clear statutory regime for the resolution of disputes arising out of tax and tax returns including in respect of Gift Aid. There is a system of checks and balances within that statutory regime. Parliament has laid down a statutory appeal process to appeal decisions made by HMRC, including in relation to Gift Aid, which the Claimant should follow and has been following.

75. Here HMRC opened an inquiry into the Claimant's tax return pursuant to S9A TMA in November 2018 thus starting the statutory process by which it could inquire into the Claimant's tax returns and amend them. HMRC provided its decision on 1 March 2019. It issued closure notices on 26 June 2020 and the Claimant indicated an intention to challenge the closure notices on 21 July 2020. The appeal to the closure notices has yet to run its course.

76. The fact that the resolution may not be one that the Claimant wants does not entitle him to circumvent the existing statutory regime and seek to ask the court to exercise its discretionary equitable jurisdiction. It does not mean that the statutory regime is unjust or unfair. As Charles Heller QC commented in *Cameron,* whilst it was odd it was not absurd or repugnant.

77. It seems to me that it would be an odd and a surprising result and contrary to public policy if the statutory regime, which cannot be displaced in other circumstances (see for example *Autologic* and *Knibbs*), could be displaced and circumvented by the use of the equitable remedy of rectification.

78. For these reasons even if a tax return were, in principle, a unilateral instrument, I am not persuaded that there is jurisdiction to rectify the tax return.

79. Finally, and for completeness on the issue of discretion Mr Arnfield submits that there would be no reason as a matter of discretion to refuse rectification in this case. The Claimant was seeking to use tax reliefs expressly provided by statute and to do so for the very substantial benefit of charity rather than himself. Mr Arnfield submits that it is difficult to posit a more striking example of exemplary citizenship – or more illogical and capricious statutory provision.

80. For the reasons set out in this judgment even if a tax return were in principle a unilateral instrument to which the equitable jurisdiction of rectification could be applied I would not, on the facts of this case, exercise discretion in favour of the Claimant.