TC01336

Appeal number TC/2010/09246

Appeal against HMRC's decision that travel expenses incurred by a doctor who was on a training programme which required that he rotate to a different hospital each year were not deductible – appeal dismissed - each rotation was a separate permanent employment and the expenses were the normal commuting expenses - the travel was not in the performance of his duties which did not commence until he reached the relevant hospital

FIRST-TIER TRIBUNAL

TAX

MR THANDAYUTHAPANI SATHESH-KUMAR **Appellant**

- and -

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

TRIBUNAL: S.M.G.RADFORD(TRIBUNAL JUDGE)
DAVID E.WILLIAMS CTA

Sitting in public at The Old Bakery, Norwich NR1 3PL on 24 June 2011

The Appellant in person

Mrs K.Walker for the Respondents

DECISION

1. This is an appeal against the closure notice issued by HMRC in respect of the tax year ending 5 April 2009 and the resultant amendment by HMRC to the Appellant's self assessment return resulting in tax due of £3,290.40.

Background and facts

2. A short tax return was issued to the Appellant on 6 April 2009 and the completed return was received by HMRC on 10 July 2009.

3. The Appellant claimed expenses of £9,281 of which £8,131 was in respect of travel to work. He had two employments during the year and the return showed that he had overpaid £86 tax.

4. HMRC opened an enquiry into the Appellant's tax return on2 June 2010 under Section 9A of the Taxes Management Act 1970 ("TMA").

5. The Appellant was a surgical trainee in the East Anglian region for a total of six years ending in October 2010. Each year he rotated through a different hospital to meet the training requirements. In this period he worked successively at King's Lynn, Bedford, Luton and Dunstable, Ipswich and Norwich hospitals

6. The training programme was arranged by NHS East of England Deanery based in Cambridge. The Appellant lived in Cambridge and travelled each day from there to the respective hospitals to carry out his duties. He claimed the travel expenses of this travel as a deduction against his income.

7. The Deanery however was not his employer. He was employed and paid by each hospital he worked for during the training programme. A letter dated 28 May 2004 from the Deanery to the Appellant specifically stated that it was not an offer of employment. Instead his contract of employment would be with the respective participating NHS trusts and he would be employed and paid by each hospital he worked for during the training programme.

8. Documents provided by the Appellant from the various NHS trusts showed that each placement was a separate employment.

9. HMRC closed the enquiry on 19 August 2010 by the issue of the closure notice under Sections 28 (1) and (2) of the TMA and reduced the deduction for expenses to £840. HMRC decided that the travel expenses claimed were not an allowable deduction from the earnings.

10. The Appellant requested a review of the decision and the review upheld the decision.

11. The Appellant appealed to the Tribunal on 7 December 2010.

Appellant's Submissions

12. The Appellant contended that he was appointed by the Deanery which paid his salary. The Deanery allocated hospitals on a yearly basis depending on the training requirements of the trainee and the trainee had no control over the placements.

13. The Appellant submitted that because the placement in each hospital was only for a year (or two years in the case of Luton and Dunstable) it should count as a temporary placement within the Deanery and he would therefore like to claim the cost of daily travel from his home in Cambridge on the basis that it was travel to a temporary work place.

14. The Appellant contended that he had made the claim on the basis of advice from another trainee in his position who had successfully appealed to HMRC and consequently been allowed his travel expenses.

HMRC's Submissions

15. HMRC submitted that the Appellant's various duties under the terms of his engagements did not start until he arrived at his place of work. The journeys therefore fell within the definition of commuting which is not an allowable deduction from his employment by virtue of Section 338 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

16. HMRC did not accept that the copy of approval of an application for an immigration document provided by the Appellant was unequivocal evidence that the Deanery was the employer for each of the separate placements. The letter indicated that the Appellant was likely to change NHS trusts under the Deanery whilst training.

17. HMRC referred to the Revenue Manual EM61017 which dealt specifically with the tax treatment of the travel expenses of junior doctors on rotational contracts. The Manual stated that each hospital would be regarded as a permanent workplace because it was the only place the trainee would work for the duration of that employment. The fact that each employment was part of a larger programme of training did not change that conclusion and no deduction was permitted for the costs of travelling between the doctor's home and the hospital at which they were employed.

18. Additionally HMRC referred to the Court of Appeal case of *Parikh v Sleeman (Inspector of Taxes)* [1990] STC 233 in which a doctor in general practice held three part time hospital employments. The doctor claimed a deduction for expenses incurred travelling to and between the hospitals but the Court found that while travelling to and between the hospitals he was not travelling in the performance of his duties which did not begin until he arrived at the hospitals.

19. Although the Appellant had asserted that he was paid by the Deanery HMRC records showed that each of the respective NHS trusts paid him and operated PAYE in respect of those payments.

20. HMRC contended that as the Appellant was employed at one location for the whole period of the corresponding contract of employment that location became the permanent place of employment for the whole of that period regardless of the length of that employment.

21. Each succeeding contract would then determine a new permanent workplace rather than being temporary workplaces as contended by the Appellant.

Findings

22. Whilst we have sympathy with the Appellant we find that the legislation, case law and the Revenue guidance which is specifically directed at junior doctors in the Appellant's position is clear.

23. Although the Deanery supervised the Appellant's training and helped with immigration formalities, it was not his employer The Appellant was paid by each of the hospitals for which he worked and had a separate employment contract with each hospital. For the duration of each such contract, he was required to attend to perform his duties only at the relevant hospital.

24. We find that each hospital became his "permanent workplace" as defined in Section 339 (2) ITEPA. Travel between his home and each hospital was thus "ordinary commuting" as defined in Section 338(3)(a). Section 338(2) specifically prohibits a deduction for the costs of such commuting.

25. We find therefore that he was not entitled to deduct his travel expenses which were the costs of his commuting to work and were not in the performance of his duties which did not start until he arrived at the relevant hospital.

Decision

26. The appeal is dismissed and the amendment to the Appellant's tax return is hereby confirmed.

27. 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.

TRIBUNAL JUDGE
RELEASE DATE: 21 JULY 2011