TC02772

Appeal number: TC/2012/07860

Capital Gains Tax – allowable deductions from disposal proceeds – purchase of one half share in property followed by later purchase of the other half share – latter transaction treated in tax return for the year in question as disposal of existing half share and acquisition of entire property, resulting in small tax payment – whether, on a later disposal of the entire property, the Appellant should be allowed to deduct market value of entire property at time of 100% acquisition – held no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BOOTA SINGH CHAHAL **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
MOHAMMED FAROOQ

Sitting in public in Priory Court, Bull Street, Birmingham on 24 April 2013

Talwinder S Patara of T S Patara & Co, Chartered Accountans, for the Appellant

Christine Cowan, Presenting Officer of HMRC, for the Respondents

DECISION

Introduction

1. The appeal concerns the capital gains tax liability arising on a disposal by the Appellant of a property known as 106 Grove Lane, Handsworth, Birmingham ("Grove Lane").

2. For many years, the Appellant owned a one half share in Grove Lane jointly with another individual. He then bought the outstanding half share from that individual some years ago, at a price which the parties agreed to be one half of the value of Grove Lane at that time (and significantly higher than the price he had paid for his original half share).

3. In his tax return for the tax year when he acquired the remaining half share, the Appellant treated the transaction as a disposal of his half share (on which he paid a small amount of capital gains tax) and, by implication, a corresponding acquisition of the whole of Grove Lane for a price equal to its agreed market value.

4. Much later, the Appellant disposed of Grove Lane.

5. The Appellant claims to be entitled to deduct, in computing the gain on the eventual disposal of Grove Lane, its full market value at the time when he purchased the outstanding 50% interest, rather than the aggregate of the sums he actually paid to acquire the full 100% interest. HMRC do not agree. Hence this appeal.

The facts

6. On 5 August 1983, the Appellant and a Mr K Bhara bought Grove Lane in equal shares. They acquired a half share in it each, and each of them paid half of the total price. The Appellant's share was £7,500.

7. Grove Lane was jointly owned by the Appellant and Mr K Bhara until 1 November 1999, at which time the Appellant bought Mr Bhara's half share for £26,000 plus incidental costs of £427. Whether or not the Appellant and Mr Bhara were connected parties at that time, there is no suggestion that the agreed purchase price for the half share was anything other than arms' length market value.

8. Whilst the Appellant and Mr Bhara were business partners for a period of time, Grove Lane was not a partnership asset.

9. In his self-assessment tax return for the year 1999-2000, the Appellant included entries which treated the November 1999 transaction as a disposal of his half share in the property for net proceeds of £25,574. This resulted in him reporting a taxable gain of £7,600 which, after the annual exempt amount, resulted in chargeable gains of £500. The Appellant paid tax on this gain at the time. His return for 1999-2000 was not taken up for enquiry by HMRC and the time for making any amendments to it, or for claiming repayment of any tax overpaid, is now well past. In

his 1999-2000 return, the Appellant noted in the "Additional Information" section that "Grove Lane was transferred into the name of BS Chahal only in Oct 99"

10. The Appellant ultimately sold Grove Lane on 19 June 2006 for £147,500. He included details of the sale in his self-assessment tax return for 2006-07, though the exact basis of his entries in that return is not totally clear.

11. HMRC took up his 2006-07 return for enquiry on 25 August 2008. Their enquiry was only into the capital gains tax treatment of his disposal of Grove Lane and another property during the same year.

12. As the enquiry developed, it became clear that the Appellant's 2006-07 return had been submitted on the basis that he had disposed of his half share in Grove Lane in 1999 and had acquired the whole of the Grove Lane property in the same year for a consideration equal to its total value at the time he bought Mr Bhara's half share.

13. Various other issues arose about the calculation of the chargeable gain, including indexation, taper relief and allowable expenses. These were all resolved by agreement.

14. The only outstanding issue in dispute between the parties was the tax effect of the purchase of Mr Bhara's half share in 1999. The Appellant argued that he should be allowed to deduct the total value of the property at that time in computing the gain on the 2006 disposal (even though he had only actually paid Mr Bhara the value of the half share he was buying). He also argued that HMRC were no longer entitled to question the treatment of the 1999 transaction as reflected in his 1999-2000 tax return because he had made full disclosure of the basis on which he had accounted for the transaction in the "Additional Information" section of that return.

15. As the parties were unable to agree on these issues, HMRC formally closed their enquiry on 7 March 2012, making an amendment to the Appellant's self-assessment return for 2006-07. The result was an increase of £4,006.40 in the Appellant's tax liability for the year 2006-07. This decision was confirmed on review on 12 July 2012 and the Appellant now appeals against it.

16. It is clear that the only dispute between the parties is whether the Appellant should be allowed to deduct as allowable expenditure the whole market value of Grove Lane as at November 1999, rather than the expenditure that he actually incurred in two stages in 1983 and 1999.

17. The only basis upon which the Appellant disputes HMRC's calculation is that he says they should be required to adopt the basis underlying his 1999-2000 return, even if it is incorrect, because they did not question it at the time. He says that HMRC are effectively using their "discovery" powers to override the 1999-2000 return, and they should not be permitted to do so.

The law

18. This appeal is concerned with identifying what allowable expenditure may be set against the disposal proceeds in computing the Appellant's chargeable gain. The relevant provisions are contained in section 38 Taxation of Chargeable Gains Act 1992 ("TCGA") which, so far as relevant, provided as follows at all material times:

> "**38 Acquisition and disposal costs, etc**
>
> (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to –
>
> (a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,
>
> (b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,
>
> (c) the incidental costs to him of making the disposal.
>
> (2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty or stamp duty land tax) together –
>
> (a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and
>
> (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act."

19. As Grove Lane was not a partnership asset of the business partnership between the Appellant and Mr Bhara, section 59 TCGA has no application in this case.

Discussion and conclusion

20. Regrettably we cannot agree with the Appellant's argument. HMRC's calculation is technically correct and there is no basis for it being required to include an additional £26,000 of allowable expenditure that the Appellant did not in fact incur.

21. The calculation of the Appellant's tax liability must be carried out as at the date of disposal, allowing only expenditure which is identified as being allowable by the legislation. The fact that the Appellant may have made an incorrect return for 1999-2000, on the basis of which he accounted for a small amount of tax that should not have been paid, does not affect this. HMRC have not (either expressly or impliedly) used their "discovery" powers, as the incorrect contents of the 1999-2000 return are entirely irrelevant to the correct CGT calculation for the 2006-07 disposal of Grove Lane.

22. It follows that the appeal must be dismissed.

23. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 1 July 2013