TC04042

Appeal number: TC/2013/07491

INCOME TAX – self-assessment return – was discovery assessment lawful? Yes - should loss relief be allowed? – No – was it appropriate to treat unexplained income as a loan in the absence of loan documentation? – No - Appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

RUSSELL PRICE **Appellant**

- and -

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

TRIBUNAL: JUDGE MS ALISON MCKENNA
MR DAVID MOORE

Sitting in public at Bedford House, Belfast on 1 September 2014

The Appellant represented himself

Mr Paul O'Reilly of HMRC represented the Respondents

DECISION

1. This matter concerns Mr Price's appeal against HMRC's decision letter of 18 October 2013, in which it upheld Closure Notices and Amendments in respect of the tax years 2008– 2009 and 2009–10 and Discovery Assessments for the tax years 2006-2007 and 2007–2008. Mr Price appealed to the Tribunal by way of his Notice of Appeal dated 29 October 2013.

2. By the time of the Tribunal hearing, the issues in dispute between the parties had narrowed considerably. Mr O'Reilly explained that HMRC had now agreed with Mr Price that 85% of the business expenses he had claimed for 2007-2008 and for 2008-2009 would be allowed, notwithstanding the lack of complete records in support of the expenses claimed; also that the provenance of some unexplained bank lodgements for the year 2009–2010 had now been agreed in the light of further evidence from the Appellant so that they were no longer to be treated as trading income. The Tribunal was not therefore asked to rule on these issues.

3. The Tribunal was asked to decide three outstanding issues: (i) whether HMRC was correct to have disallowed the share loss relief claimed for the year 2006–2007; (ii) whether HMRC had acted lawfully in making a discovery assessment in March 2011, withdrawing the loss relief for the earlier year; and (iii) whether HMRC had been correct to treat £140,000 lodged in the Appellant's bank account as unidentified income for the tax year 2009-2010, contrary to the Appellant's case that the funds were a loan.

4. The Tribunal heard submissions from Mr Price and Mr O'Reilly, and evidence from Mr Paul McShane of HMRC and from Mr Dermot O'Kane on behalf of the Appellant.

Issue (i) Loss Relief

5. In the 2006 – 2007 return, the Appellant's then advisers had claimed £70,000 share loss relief under s. 574 of the Income and Corporation Taxes Act 1988 ("ICTA") in respect of his share subscription in a company called Palmer Price Estate Agents Limited. HMRC took the view that the conditions for claiming this relief were not met because the shares had not been wholly subscribed for in cash (as then required by s. 289 ICTA) and also because the company concerned was not a qualifying company (under s.293(8) ICTA) because it was a subsidiary of another company (see paragraph 8 below). After a lengthy correspondence, the Appellant's former advisers had accepted, on his behalf, that the claim made had been invalid, but they then made a substitute claim of £56,000 in respect of the losses attributable to the value of the Appellant's premium shares in the holding company. This claim was out of time, but HMRC agreed to consider it. HMRC then concluded that it was impossible to validate the amount of the loss claimed in respect of the substitute claim, because the value of the losses claimed on the Appellant's behalf did not

correspond with the information in the company's accounts filed at Companies House (see below).

6. The Appellant's former adviser's substitute claim involved a claimed loss of £56,000 for the value of the Appellant's premium shares in the holding company, but the company's accounts filed at Companies House (which had been signed by the Appellant) disclosed no share premium account and reported the issue of 100 ordinary shares at £1 each only. HMRC had therefore taken the view that the maximum loss that could be claimed was £100, as there was no evidence to support the higher amount claimed by the Appellant.

7. The Appellant was asked if he would like to address the Tribunal on the question of the apparent discrepancy between the loss claimed and the Companies House information, but he said he had nothing to say.

Issue (ii) Discovery Assessment

8. As noted above, HMRC took the view that, in making the claim for relief under s. 574 of the Income and Corporation Taxes Act 1988 ("ICTA"), the Appellant's advisers had not disclosed that Palmer Price Estate Agents Limited was the subsidiary of a holding company called Price Wealth Management Limited. This parent-subsidiary relationship disqualified the Appellant from claiming the relief under the legislative scheme. HMRC stated that the fact that the company was a subsidiary had been discovered by HMRC itself, so it was entitled to make a discovery assessment under s. 29 of the Taxes Management Act 1970 ("TMA") and to bring into charge the £70,000 loss relief which had been wrongly allowed in the earlier year. HMRC's case was that it had acted within the extended time limits for making a discovery assessment, permitted by ss.34 and 36 TMA and that the statutory conditions for making a discovery assessment had been satisfied so that its actions were lawful.

9. Mr Price submitted that HMRC had effectively conducted an enquiry into the relevant tax year which was unlawful, because it was time-barred. He did not accept that HMRC was able to take the view that it had made a discovery about the relationships between the two companies, because the original return and supporting documentation had not been retained by HMRC or by his former advisers, so it could not be verified what information had and had not been disclosed to HMRC when the claim was made.

Issue (iii) Treatment of Unindentified Income

10. The Appellant's bank account records (obtained by HMRC under Schedule 36 to the Finance Act 2008) showed lodgements during the tax year 2009–20010 which exceeded the income shown on the Appellant's tax return. The Appellant had informed HMRC that these payments were made by to him by a third party under the terms of a loan agreement, and so did not represent taxable income. The Appellant had no loan documentation because he said it had been left behind when he and his family had fled Northern Cyprus due to threats from a business rival.

11. HMRC took the view that the burden of proof in relation to the provenance of these payments rested on the Appellant and that, in the absence of any documentary evidence to support the Appellant's case, the lodgements should be treated as additional trading income for the relevant year and an adjustment made.

12. The Appellant told the Tribunal that he had worked as a property consultant in Northern Cyprus, and a situation came about whereby a local property developer did not wish to complete a project. The Appellant had not been paid for the expenses he had incurred in relation to this development, and so when it was arranged for a consortium to take over the development, it agreed to make him a loan in order to keep him in Northern Cyprus and working on the project to see it through to completion. However, he had then been subjected to threats and intimidation from the local developer, to the extent that he had hired a bodyguard. He had decided to leave Northern Cyprus with this family and they had left everything behind, including the loan documentation. He told the Tribunal that the loan had been facilitated in Dubai and that the lender was a cash-rich UAE company which was part of the consortium that wanted the development to go ahead. He said that he had signed legal documents before the funds were released to him and that Mr O'Kane had witnessed his signature on the loan agreement.

13. In answer to questions from the Tribunal, the Appellant said that the loan was for £140,000, and the repayments were deferred but he could not remember if the deferment period was 5 or 7 ½ years. He thought that the loan did bear interest but he could not remember the rate. No security had been required. He told the Tribunal that business is done differently in Northern Cyprus and there is less formality.

14. Mr O'Kane, a former business associate of the Appellant's, had written letters to the Appellant dated 2 and 14 May 2013, which had been disclosed to HMRC and to the Tribunal. These explained that the Appellant was a self employed consultant and responsible for his own expenses, and confirmed that a loan of £140,000 had been made to the Appellant by a consortium of investors. In the letter of 14 May, Mr O'Kane gave the name of the lender, its registered office address in the UAE and its registered company number.

15. Mr O'Kane gave evidence to the Tribunal that he had witnessed Mr Price's signature on the loan agreement in a hotel in Northern Cyprus. He said he had not read the agreement and did not know the details. In answer to a question from the Tribunal about where he had obtained the very detailed information contained in his letter of 14 May 2013, Mr O'Kane said that this information had been supplied to him by the Appellant and that it was not information from his own knowledge. Mr O'Kane told the Tribunal that he had been concerned to ensure that the loan arrangements did not affect his company at the time (for which Mr Price acted as consultant) so he had been involved only to witness the Appellant's signature.

Conclusions

16. In respect of issue (i) the Tribunal concludes that share loss relief was invalidly claimed in the tax return for 2006-2007 because the shares in the company to which it

related did not qualify for the relief, being a subsidiary company. The Appellant did not put forward any legal argument in relation to this point and his previous advisers had conceded in correspondence that HMRC's interpretation of the law was correct. In respect of the substitute claim, the Appellant did not satisfy the Tribunal that HMRC's decision to allow only £100 share loss relief was wrong. He could not explain why a claim had been made which was not supported by the company's accounts. The Tribunal was satisfied that, in view of the accounts filed at Companies House and signed by the Appellant himself, there was no evidence to substantiate the £56,000 loss claimed and that HMRC's decision to limit the share loss relief to the £100 share value shown in the accounts was the correct approach.

17. In respect of issue (ii), as noted above, an invalid share loss relief claim had been submitted. We are satisfied on the balance of probabilities that the relevant information about the company had not been provided to HMRC when it allowed this claim. It is clear that the Appellant's previous advisers had, in making the claim, represented to HMRC that the company was a qualifying company when it was not. It follows that HMRC made a discovery of the relevant facts later. We are accordingly satisfied that the grounds for making a discovery assessment under s. 29 TMA were met in this case. We do not accept Mr Price's argument that the discovery assessment was effectively an out-of-time enquiry and thus unlawful.

18. In respect of issue (iii), we were unable to make a finding of fact on the balance of probabilities that the funds lodged in the Appellant's bank account were a loan payment. In the absence of any documentation to support his case, the Tribunal was required carefully to evaluate the evidence of Mr Price and his witness Mr O'Kane. We found this unsatisfactory in a number of respects. In relation to Mr Price's evidence, we were troubled by his stated inability to remember certain key elements of the loan agreement by which, on his own account, he had become significantly indebted to a third party. We were unconvinced by his evidence about the existence of the loan in view of his vagueness as to its terms. In relation to Mr O'Kane's evidence, we were unable to accept it as corroborative of the Appellant's evidence. He said that he had no knowledge of the loan terms and had only witnessed the Appellant's signature on a document without looking at it. We were troubled by the fact that he had written a letter giving the misleading impression that details of the arrangements were within his own knowledge, when he accepted at the Tribunal hearing that these details had been supplied to him by the Appellant. In any event, we have no way of being satisfied whether the details supplied by Mr O'Kane were correct as the Appellant did not produce any evidence to verify the information in Mr O'Kane's letter. In all the circumstances we conclude that the Appellant has not discharged his burden of proof in this regard and that HMRC's decision to treat the unexplained funds as trading income and liable to tax is correct and should stand.

19. The Tribunal therefore dismisses this appeal and confirms HMRC's decision of 18 October 2013, as subsequently varied by the agreements (which we regard as generous) described in HMRC's submissions to the Tribunal.

20. 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.

ALISON MCKENNA
TRIBUNAL JUDGE

RELEASE DATE: 3 October 2014