[2018] UKFTT 712 (TC)

TC06855

Appeal number: TC/2017/03330

CORPORATION TAX – discovery assessments – whether or not HMRC able to raise discovery assessments on the grounds of carelessness – director of appellant genuinely believed the return to be correct – whether reasonable for her to hold that belief – held not – whether carelessness by accountant – held yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

SUPAGLAZING LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE PHILIP GILLETT
MICHAEL BELL

Sitting in public at Ashford Hearing Centre, Kent on 23 November 2018

David Pett, counsel, for the Appellant

Paul Harbottle, officer of HMRC, for the Respondents

DECISION

1. This was an appeal against three assessments to corporation tax and three related penalty assessments. These were subsequently revised to the figures as set out below.

Period Ending	CT Profits	Tax Due	Date of Assessment	Penalty	Date of Penalty Ass
30 Jun 11	17,021	3,531.98	28 Feb 17	688.73	14 Jun 17
30 Jun 12	58,922	11,784.40	28 Feb 17	2,297.96	14 Jun 17
30 Jun 13	16,269	3,253.80	10 Aug 17	withdrawn	10 Aug 17

2. It was common ground between the parties that the assessments were made out of time and that HMRC could only therefore raise these assessments under the "discovery" provisions of para 41 Sch 18 FA 1998.

3. Apart from the question of discovery there are three separate issues in this appeal:

(1) Within the CT return for the accounting period ended 30 June 2011 the appellant ("the Company") made a deduction in their Profit and Loss Account for £17,021 in legal costs relating to an action to enforce a civil evasion penalty by HMRC, which had been reimbursed by HMRC,

(2) Within the revised return for the accounting period ended 30 June 2012 the company made an incorrect deduction in their Profit and Loss Account for £80,000 relating to a VAT liability, and

(3) The company carried forward losses of £17,778 to the accounting period ended 30 June 2013 which were created as a result of the revised CT return for the accounting period ended 30 June 2012.

The Facts

4. We were given a bundle of documents relating to the appeal and we received oral evidence from Mrs Eleftaria Jones, the main director and company secretary of the company. We found her evidence to be confused and confusing. She stated that she was not an accountant and that she did not get engaged in Sage, the company's accounting system. It was clear that she had a very limited understanding of accounting matters and as such her evidence was of minimal value in our understanding of exactly what had happened as regards the company's accounts and tax computations. We did however find the following as matters of fact.

5. The company was founded in 1981 by Mr and Mrs Jones as a manufacturer and supplier of double glazing and related products, headquartered in Strood, Kent. Mr Jones died in April 2009 and Mrs Jones is now the 64% majority shareholder, a director and company secretary of the company. The remaining 36% of the shares are owned as to 12% each by her three children. In 2012 the company had a turnover of £4.1m and provided work for over 100 individuals as employees or sub-contractors.

6. The company has been subject to a number of HMRC/Inland Revenue/Customs and Excise enquiries over the years, starting in 1996.

7. The initial enquiry went on for a few years until Baker Tilly prepared a disclosure report, which we assume disclosed some irregularities, which HMRC accepted. There was a further enquiry concerning VAT which started around 2000. This was an extensive enquiry which led to HMRC assessing the company to a Civil Evasion Penalty. This penalty assessment was eventually withdrawn. Mr Pett and Mrs Jones emphasised that there was therefore no finding of wrongdoing on the part of the company. However, the investigation seems to have revealed a number of issues with the company's accounting for VAT, as regards the under-declaration of input tax and other issues.

8. HMRC agreed to pay the reasonable costs of the company in defending the Civil Evasion Penalty and paid the company the sum of £204,000, in three tranches, of £104,000, £80,000 and £20,000. These payments were made directly to Byrne and Partners, who were the company's legal representatives during the appeal process, on the instructions of Mrs Jones.

9. Byrne and Partners only passed £80,000 of these sums onto the company and retained the balance to cover their unbilled costs. However, we were referred to an entry in the company's books of £20,000, described as unbilled costs, which, we were told, the company entered into its books "in order to recover the VAT", in spite of the fact that it had not received an invoice for this amount and had never settled such an invoice. This figure is equal to £17,021 plus VAT thereon and, in addition to recovering the VAT, the company has claimed the amount of £17,021 as a corporation tax deduction in the computations for the year ended 30 June 2011.

10. During this investigation the company had commissioned two reports from Samuels which had assisted the company and HMRC to reach an agreement and had apparently supported "Fleming" claims of approximately £52,000 and £84,000.

11. The enquiry seems to have been concluded by an agreement dated 29 January 2008 which is contained in a fax from Byrne and Partners, a firm of solicitors engaged by the company, and which provides, inter alia, the following:

(1) The original [VAT] assessment was reduced to £73,742 plus interest.

(2) Officer Inkersole, the investigating officer, indicated that he would support an application for "Fleming" claims as set out in the "Second Samuels Report". Officer Inkersole recognised a potential claim of at least £52,748.

(3) The Commissioners acknowledged that the company was entitled to its reasonable costs in respect of the withdrawal of the Civil Evasion Penalty which would be subject to assessment if not agreed.

(4) The parties agreed that the further assessment under appeal, in the sum of £17,427 plus interest, lodged on 2 May 2003, should remain before the tribunal but be taken out of the list to enable further investigations to be undertaken, with a view to relisting it if no agreement was reached between the parties.

12. Importantly, this agreement was reached on the basis that the company would be making "Fleming" claims of at least £52,748. Mrs Jones believed that this claim had been made by Byrne and Partners, on the basis that their work on the claim had been billed to the company. However, HMRC said that they had received no such claim and the company was unable to produce a copy of any claim made by Byrne and Partners on behalf of the company.

13. However, the analysis of the charges from Byrne and Partners which they had prepared simply states "Considering Fleming/Conde Nast Publications and its impact upon the defence". Another analysis merely says "preparation". It says nothing about actually having made such a claim. It would appear that Mrs Jones's understanding of what had happened was therefore somewhat limited.

14. This left HMRC continuing to press for payment of a liability which Mrs Jones thought did not exist. Astonishingly, no-one within the company had attempted to reconcile this mis-match of expectations as regards the company's VAT liability, in spite of continued pressure from HMRC for payment and the difficulties outlined below.

15. Eventually, on 4 May 2011, HMRC issued two distraint notices for recovery of the monies which they claimed were due. We were given a copy of the first distraint notice, in the sum of £135,434.81, which included an analysis of the outstanding debts. These mostly related to PAYE and NIC liabilities, most of which had already been paid. No copy of the second distraint notice was available.

16. In a letter dated 8 August 2011 addressed to Byrne and Partners, HMRC had set out their analysis of the distraint notices and included copies of letters dated 1 September 2010, referring to a time to pay agreement, 22 September 2010, 4 October 2010, 28 January 201, 15 December 2010 and 31 January 2011, which they said had all been sent to the company's registered address. HMRC acknowledged that a number of payments had been misallocated but explained that the second distraint notice was made up as follows:

VAT settlement agreed on 29 Jan 2008	73,742
Interest on that amount	21,042
Interest on £17,427 referred to above	3,316
Further interest on £17,427	2,333
Total	100,433

17. The company paid an amount of £20,994, on 30 August 2011, being £73,742 less the "Fleming" claim offset of £52,748, but the other issues raised in the HMRC letter of 8 August 2011 seem to have been ignored. It is not clear to us if the contents of this letter were passed on to the company by Byrne and Partners.

18. Matters came to a head on 22 September 2011 when the company was visited by GJ Wisdom Associates, Specialist Auctioneers and Valuers, who were under instruction from HMRC to seize all the assets of the business, thus closing down the company.

19. During this visit various telephone calls were made to HMRC to attempt to understand what the distraint order related to but the officials contacted were from the Debt Management Office and could not therefore assist. Eventually, in order to save the business, Mrs Jones agreed to pay GJ Wisdom £81,223. £1,223 was paid by a company cheque but the balance, of £80,000, was paid by a personal cheque from Mrs Jones the next day, using funds she had borrowed from her brother overnight.

20. In her oral evidence Mrs Jones stated that she had no idea what the £80,000 related to and simply paid it to persuade GJ Wisdom not to seize the company's assets. We accept this as factually correct.

21. Interestingly, there was an entry dated 30 September 2011 in a company ledger, account 2191, showing the £80,000 and describing it as "VAT paid Mrs Jones". Mrs Jones was unable to explain why this entry said what it did.

22. Subsequently Mrs Jones came to the conclusion that this payment could not have been VAT because she believed that the company had cleared all its VAT debts when it had paid the sum of £20,994 on 30 August 2011. She therefore came to the conclusion that it could only be PAYE/NIC.

23. In November 2011 HMRC commenced yet another enquiry into the company's affairs under COP 9, this time into the Directors Loan Accounts, which showed an unusually high number of transactions. In response, the company hired Jim Keys of KPMG to prepare a report on the Directors Loan Accounts. Mrs Jones was quite clear that Mr Keys was not authorised to have any other dealings with HMRC but in fact he wrote an email to HMRC on 19 September 2016 setting out his understanding of a number of related issues which are pertinent to this appeal and to which we refer later.

24. On 4 February 2013 HMRC issued determinations under Reg 80 of the PAYE Regulations alleging that the various payments through the directors' loan accounts should be treated as salary and subject to PAYE. The company sought assistance from a number of individuals and organisations and eventually demonstrated that there were 20 transactions, including the £80,000 payment by Mrs Jones, which were quite properly the reimbursement of expenses incurred by the directors personally in an effort to keep the company afloat, and thus were not salary for PAYE purposes. Many of these transactions then flowed through into tax deductions in the 2012 accounts.

25. The above picture is very confused and confusing and would seem to indicate a company without satisfactory accounting controls. We were not shown any copies of the company's books of account, which would have enabled us to follow the various accounting entries, and we did not receive oral or written evidence from Andrew Griggs, of Kreston Reeves, the company's external accountants. We therefore found it very difficult to come to any sound conclusions as to how the items in dispute had been accounted for in the company's books.

26. Fortunately however, we were shown two emails, one from Andrew Griggs and one from Jim Keys which both summarised the position very clearly. We note that Mr Keys was not authorised to communicate with HMRC on matters other than the Directors' Loan Accounts but nevertheless, he did write to HMRC, and we do not consider the fact that he was not authorised to deal with HMRC on matters outside his brief should require us to ignore what he said, especially as it is effectively corroborated by the email from Mr Griggs.

27. Mr Keys' views are set out in an email of 19 September 2016 to Sarah Harmson, the investigating officer. It states:

> "2. £80k deducted in the P&L as being subcontractors PAYE/NIC.
>
> This relates to VAT and should be added back.
>
> We understand that this may relate to VAT and interest. To the extent that any amount relates to interest we may seek to obtain a deduction.
>
> 3. Treatment of the £204k costs received from HMRC.
>
> This has been accounted for in amounts of £80k, £20k and £104k. Unless stated otherwise these amounts have been dealt with via a suspense account called Monies from Commissioners which does not get charged to the P&L.
>
> £104k (£86,667 + VAT) – this has been retained by Byrne and Partners. The cost has not yet been charged to [the company's] P&L, so currently tax neutral.
>
> £80k – This has been received by [the company] but did not get posted to the P&L – so again tax neutral.
>
> £20k – This amount has been retained by Byrne and Partners. We believe that the net of VAT amount was charged to the P&L as a deduction for a legal cost. The net of VAT amount was likely to have been £17,021.28 (calculating VAT at 17.5%)."

28. The reference to the need to add back the amount of £80,000 because it relates to VAT arises because the company's accounts and computations are prepared on a VAT exclusive basis and therefore all VAT amounts are dealt with outside the P&L.

29. Mr Griggs wrote to Mr Pett on 16 November 2018, in connection with this appeal hearing. He advised as follows:

"**Professional Fees re Tax Litigation**

Byrne and Partners (B&P) were the lawyers dealing with a tax investigation into Supaglazing. The company was awarded compensation of £204,000 towards its costs, payable by HMRC, which was paid directly to B&P in two payments of £100,000 and £104,000. B&P retained £124,000 towards their unbilled costs and remitted £80,000 to Supaglazing.

In addition, the company received an invoice from B&P dated 11 January 2012 for £66,253.47 (plus VAT). Both the £80,000 remittance and this invoice were shown under a balance sheet code until the final invoicing position had been agreed with B&P.

HMRC then asked us to finalise the total cost/compensation position and release the balance to the P&L account. As stated below, we reviewed the bill of costs, which totalled £389,981.22, together with the spreadsheet of Byrne and Partners fees and unbilled time. We found that the company had not had tax relief for £148,210 which was arrived at as follows:

B&P billed costs	77,404
B&P invoice previously disallowed by investigation	17,021
B&P unbilled time	114,938
KPMG invoices	67,423
Dechert LLP	75,424
B&P invoice dated 11 Jan 2012	66,253
	418,436
Contribution from HMRC	204,000
Net Total	214,463

We then submitted a revised corporation tax computation and return for the year ended 30 June 2015 to HMRC in 2017.

In respect of the £80,000 payment made by Mrs Jones to GJ Wisdom we were advised (when preparing the accounts for the year ended 30 June 2013) [presumably by Mrs Jones] that this was paid in relation to a distraint order relating to PAYE, NIC and income tax. The payment related to the year ended 30 June 2012 and the personal payment had not been accounted for by the company. We made a prior year adjustment to the 2012 accounts and the 2012

Corporation Tax Return was resubmitted to HMRC on 23 May 2014 and an acknowledgement of an amendment to a CT return was received in June or July 2014.

Consequently we have submitted a corporation tax return and computation claiming tax relief on the £80,000 and HMRC believe the payment relates to VAT so should not be allowable."

30. The figure of £148,210 which Mr Griggs quotes was the figure of £214,463 less the B&P invoice for £66,253 which had already been claimed in the original computations. The combined figure of £214,463 was claimed in the revised computations, ie a figure including the disputed £17,021 which had already been claimed in the computations for the year ended 30 June 2011.

31. We therefore find as a matter of fact that:

(1) The item of £80,000 had been deducted in arriving at the taxable profits when the 2012 Corporation Tax Return was resubmitted to HMRC on 23 May 2014 and should not have been because it related to VAT, and

(2) The fees of £17,021 had originally been claimed in earlier computations and were again claimed in the revised computations for the year to 30 June 2015.

(3) The company had not received an invoice from Byrne and Partners in respect of the costs of £17,021 when it submitted its original claim for a deduction in respect of this amount.

The Law

32. This case primarily concerns whether or not HMRC were able to raise assessments under the "discovery" provisions of para 41 Sch 18 Finance Act 1998. These provision are primarily set out in paras 41 to 43 which provide, as far as is relevant, as follows:

"*Assessment where loss of tax discovered or determination of amount discovered to be incorrect*

41(1) If an officer of Revenue and Customs discovers as regards an accounting period of a company that—

(a) an amount which ought to have been assessed to tax has not been assessed, or

(b) an assessment to tax is or has become insufficient, or

(c) relief has been given which is or has become excessive,

The officer may make an assessment (a "discovery assessment") in the amount or further amount which ought in their opinion to be charged in order to make good to the Crown the loss of tax.

(2) If an officer of Revenue and Customs discovers that a company tax return delivered by a company for an accounting period incorrectly states—

(a) an amount that affects, or may affect, the tax payable by that company for another accounting period, or

(b) an amount that affects, or may affect, the tax liability of another company,

The officer may make a determination (a "discovery determination") of the amount which in their opinion ought to have been stated in the return.

Restrictions on power to make discovery assessment or determination

42(1) The power to make—

(a) a discovery assessment for an accounting period for which the company has delivered a company tax return, or

(b) a discovery determination,

is only exercisable in the circumstances specified in paragraph 43 or 44 and subject to paragraph 45 below.

(2) …

Fraudulent or negligent conduct

43 A discovery assessment for an accounting period for which the company has delivered a company tax return, or a discovery determination, may be made if the situation mentioned in paragraph 41(1) or (2) was brought about carelessly or deliberately by —

(a) the company, or

(b) a person acting on behalf of the company, or

(c) a person who was a partner of the company at the relevant time."

33. Paragraph 46 Sch 18 FA 1998 makes provision as regards the applicable time limits for making a discovery assessment under para 41 as follows:

"*General Time Limits for Assessments*

46(1) Subject to any provision of the Taxes Acts allowing a longer period in any particular class of case no assessment may be made more than 4 years after the end of the accounting period to which it relates.

(2) An assessment in a case involving a loss of tax brought about carelessly by the company (or a related person) may be made at any time not more than 6 years after the end of the accounting period to which it relates (subject to sub-paragraph (2A) and to any other provision of the Taxes Acts allowing a longer period)."

Discussion

Discovery Assessments

34. We have found as a matter of fact that:

(1) The item of £80,000 had been deducted in arriving at the taxable profits in the revised computations for the year ended 30 June 2012 and should not have been because it related to VAT, and

(2) The fees of £17,021 had originally been claimed in the computations for the year ended 30 June 2011 and were again claimed in the revised computations for the year to 30 June 2015.

(3) The company had not received an invoice from Byrne and Partners in respect of the costs of £17,021, let alone paid those fees, when it submitted its original claim for a deduction in respect of this amount.

35. These findings are essentially in line with the views of HMRC, although it is unclear whether a deduction for the amount of £17,021 should properly be made in respect of the computations for the year ended 30 June 2011 or the revised computations for the year ended 30 June 2015.

36. There is no doubt that HMRC made a discovery when they identified the items of £17,021 and £80,000 which were treated incorrectly, and this was not contested by Mr Pett.

37. The key issue therefore is whether or not HMRC were permitted to raise assessments under the discovery provisions of Sch 18 FA 1998. In other words, was the "insufficiency of tax" which HMRC "discovered" "brought about carelessly or deliberately by the company or a person acting on behalf of the company"?

38. Mr Pett sought to persuade us that Mrs Jones genuinely believed that the £80,000 related to PAYE/NIC or sub-contractor tax when she instructed Mr Griggs to treat it as such in the tax computations. If this was a genuine belief then, he argued, her behaviour could not be described as careless because it was intentional.

39. As a general proposition we agree that this must be so but we do not believe that we can regard a genuine belief in isolation as sufficient to demonstrate a lack of

carelessness. This could lead to some absurd outcomes. We therefore consider that we must look behind this to see if it was reasonable for Mrs Jones to hold that belief.

40. Mrs Jones stated in her evidence that at the time she made the payment she did not know what it was for. She simply paid the money to prevent GJ Wisdom from seizing the assets of the company and bringing to an end the business she and her late husband had built up over 38 years, taking away the livelihoods of over 100 employees and contractors, many of whom had worked for the company since they left school. This was an entirely understandable approach.

41. However, her subsequent belief that it must relate to PAYE or sub-contractors tax does not stand up to close scrutiny. She came to this conclusion because she believed that the company did not owe any VAT and that therefore a payment to HMRC must be either PAYE or sub-contractors tax. She had no firm basis for believing this other than her belief that it could not be VAT. This was not in our view a sound approach. Apart from anything else, if it had been a payment of PAYE or sub-contractors tax which had been deducted from a salary or a payment to a sub-contractor but not paid over to HMRC then this would have been deducted in the accounts when the salary or sub-contractor payments were made. Such a payment should not therefore have been charged to the P&L account but should have been debited to the account with HMRC in the company's books for PAYE or sub-contractors tax.

42. Her alternative belief therefore, that the amount was a payment of PAYE or sub-contractors tax, could not have been reasonably held by anyone who had given any thought to the basics of accounting for PAYE and sub-contractors tax. Unfortunately, as we have already found, Mrs Jones was not well acquainted with the detail of the accounts or tax computations of the company, but this did not stop her issuing clear instruction to Mr Griggs as to how he should include the item in the corporation tax computations.

43. We therefore consider that even though Mrs Jones did have a genuine belief that the payment related to PAYE or sub-contractors tax this was not a belief which she could reasonably hold. We therefore consider that she was careless in instructing Mr Griggs to claim a tax deduction in respect of this item.

44. If we are wrong as regards Mrs Jones then we should also consider the position of Mr Griggs, who made the relevant entries for both items in the tax computations and who undoubtedly was "acting on behalf of the company."

45. Mr Pett encourage us to ignore any carelessness on the part of Mr Griggs on the basis that Mrs Jones was relying on Mr Griggs and that it was reasonable for her to rely on Mr Griggs. In support of this he referred us to the cases of *Hanson v HMRC* [2012] UKFTT 314 and *Hankinson v HMRC* [2011] EWCA Civ 1566. These cases however concern different provisions of tax legislation under which there is a specific exemption from responsibility for the actions or carelessness of a third party where reasonable care is taken by the taxpayer. There is no such exclusion in para 43 and therefore we consider such arguments irrelevant in the current case.

46. Mr Pett also submitted that we should regard Mr Griggs as blameless as regards carelessness on the basis that he was simply following instructions from Mrs Jones, who, on his submission, had not acted carelessly.

47. Again we cannot accept this. Mrs Jones may not have understood the details of accounting for tax but Mr Griggs, as a qualified accountant, should have known that a PAYE or sub-contractor tax debt would already have been deducted from the P&L account. He should also have checked that the item of £17,021 had genuinely been incurred by the company. He seems simply to have picked up an item which was entered in the accounts "in order to recover VAT" without asking whether or not a charge had, at that time, even been made to the company.

48. We therefore find that Mr Griggs behaviour was careless, even though we accept that he was acting under the direct instructions of Mrs Jones. He should have asked more questions than he did.

49. In summary therefore we consider that both Mrs Jones and Mr Griggs had behaved carelessly and that therefore, in accordance with para 46(2) Sch 18 FA 1998, HMRC have the power to raise an assessment up to six years after the end of the year of assessment.

Penalties

50. HMRC have raised penalties under Sch 24 FA 2007 for each accounting period under consideration but no longer wish to pursue the penalty for the year ended 30 June 2013, presumably on the basis that this was a purely knock-on effect from the errors in the previous two years. We have already found that the behaviour of the company was careless and therefore penalties are due in accordance with para 1(3) Sch 24 FA 2007.

51. HMRC have made reductions in the penalties to reflect the extent to which the company cooperated with them and have concluded that the appropriate level of penalty should be 19.5%.

52. We are only able to interfere with this assessment if we consider HMRC's decision to have been flawed. It does not matter whether or not we would have arrived at the same decision. In this case, however, we do not consider that HMRC's decision was flawed and we cannot therefore interfere with their conclusions.

53. Mr Pett did however suggest that we should also consider the question of a special reduction in the penalties under para 11 Sch 24. HMRC considered this possibility and decided that no such circumstances existed.

54. Mr Pett suggested that HMRC should have taken account of:

(1) The death of Mrs Jones's husband in April 2009,

(2) The succession of enquiries from HMRC, including the failed attempt to levy a civil evasion penalty,

(3) The serious impact this investigation has had on Mrs Jones's health, and

(4) The brake this has had on the development of the business.

55. We have every sympathy with Mrs Jones for the loss of her husband, especially given the way in which she and her husband had built the company up together over a period of 38 years. However the errors in question were made more than two years after Mr Jones died and we consider that if Mrs Jones had felt herself unable to carry on the business in his absence she had the opportunity to engage new personnel, especially in the accounting department, or indeed to hand over more responsibility to her children. It is clear to us that the company had insufficient discipline in the accounting area, an area in which Mrs Jones agreed she was inexperienced, and that this was the real cause of the reporting errors. We also note that many of the earlier VAT accounting errors, which had been revealed by the investigation which concluded in 2008, had in fact taken place while Mr Jones was alive. This was a long-standing problem.

56. The history of HMRC investigations is indeed very significant but every time HMRC did carry out an investigation they identified errors, sometimes in the company's favour and sometimes in theirs, but the fact that they found substantial errors almost every time they carried out an enquiry inevitably led them to enquire more. They even attempted to raise an assessment for a civil evasion penalty which is an incredibly serious charge, and reflects the level of concern within HMRC. This level of enquiry activity is not however unusual or unfair in our view, it is merely HMRC monitoring carefully the activities of a company with clear and obvious accounting weaknesses. We cannot therefore see it as a reason to reduce the penalties. It was a consequence of the company's accounting issues not a mitigating factor.

57. The impact the investigation has had on Mrs Jones health is of course regrettable, but again we would say that the solution would have been for the company to strengthen its accounts department, which may have taken some of the load off the shoulders of Mrs Jones. She admitted that she did not have an intimate knowledge of accounting matters but she continued to struggle on alone without appointing a stronger in-house accounting function. Again we cannot see this as a reason to reduce the penalties.

58. We would make a similar comment about the negative effect that this has had on the development of the business.

59. The problems subsequent to Mr Jones's death were therefore, to a large extent, self-inflicted. Mrs Jones did not take the steps which she should have taken to strengthen the accounting function in spite of all the evidence from HMRC enquiries that there were serious problems. Importantly, these problems had existed before her husband's death. Mrs Jones took great comfort from the fact that HMRC had been unable to prove their case for a civil evasion penalty, but seemed oblivious to the fact that the investigation had still revealed substantial problems with the company's accounting for VAT.

60. In summary therefore we consider that there are no special circumstances as envisaged by para 11 Sch 24 and we cannot therefore interfere with HMRC's decision on that issue.

Decision

61. HMRC have already indicated that they wish to revise some of the assessments and withdraw the penalty for the year ended 30 June 2013, decisions with which we agree.

62. With the exception of the changes proposed by HMRC, we decided that, for the above reasons, the company's appeal against the discovery and penalty assessments should be DISMISSED.

63. 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.

PHILIP GILLETT
TRIBUNAL JUDGE

RELEASE DATE: 10 DECEMBER 2018