TC01176

Appeal number: TC/2009/12349

Income tax – computation of profits – closure notice and amendments – s29 TMA discovery assessments – onus of proof on taxpayer in relation to amounts assessed – "presumption of continuity": meaning and effect. Income Tax – penalties for negligent conduct s 95 TMA 1970.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Dr I SYED **Appellant**

- and -

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

TRIBUNAL: CHARLES HELLIER (Judge)
DAVID E WILLIAMS CTA

Sitting in public in London on 18 March 2011

Simon Lewis of Lewis & Co, for the Appellant

Jack Lloyd, for the Respondents

DECISION

1. Dr Syed appeals against:-

(i) assessments made under section 29 Taxes Management Act 1970 ("TMA") in relation to the years 2001/02, 2002/03, 2003/04, 2004/05 and 2006/07;

(ii) an amendment to his tax return for the year 2005/06; and

(iii) penalty assessments under s95 TMA in respect of each of these years.

2. Dr Syed is a dentist, and the assessments and the amendment relate to HMRC's contention that Dr Syed's returned profits for these years should be increased by adding sums in respect of:-

(i) costs which were erroneously deducted from his profits as repairs;

(ii) costs which were erroneously deducted because they were expenses which related to private rather than business use of his premises;

(iii) unrecorded income;

(iv) certain legal or professional costs; and

(v) interest and bank charges.

3. HMRC say that Dr Syed's conduct in submitting tax returns for each of these years was, by reason of the need for these adjustments, negligent and that accordingly penalties are exigible under section 95 TMA. In assessing the penalties they have applied an 80% mitigation deduction to reflect Dr Syed's cooperation and disclosure, and the relative seriousness of the default.

The Relevant Legislation

4. Section 8 TMA requires an individual to make a tax return (a self assessment return) if given notice to do so. Section 9A permits an officer to open an enquiry into the return within 12 months after the filing date where the return was delivered in time. Section 9C permits an officer to amend a self assessment return during an enquiry and section 28A requires HMRC to make any required amendments to the return on the closure of the enquiry. Section 29 TMA permits HMRC to make an assessment in certain circumstances if it is discovered that tax has been insufficiently assessed. Such an assessment is commonly called a "discovery assessment". The relevant parts of section 29 provide:-

> **29 Assessment where loss of tax discovered**
>
> (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—
>
> (a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or
>
> (b) that an assessment to tax is or has become insufficient, or
>
> (c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) ...

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct of the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b) informed the taxpayer that he had completed his enquiries into that return,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—

(a) it is contained in the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment (the return), or in any accounts, statements or documents accompanying the return;

(b) it is contained in any claim made as regards the relevant year of assessment by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;

(c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer; or

(d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—

(i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or

(ii) are notified in writing by the taxpayer to an officer of the Board.

(7) In subsection (6) above—

(a) any reference to the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment includes—

(i) a reference to any return of his under that section for either of the two immediately preceding years of assessment; and

(ii) ...and

(b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf.

(8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment.

(9) Any reference in this section to the relevant year of assessment is a reference to—

(a) in the case of the situation mentioned in paragraph (a) or (b) of subsection (1) above, the year of assessment mentioned in that subsection; and

(b) in the case of the situation mentioned in paragraph (c) of that subsection, the year of assessment in respect of which the claim was made.

5. Sections 34 and 36 put time limits on the making of assessments. Section 34 provides:

34 Ordinary time limit of six years 4 years

(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case an assessment to income tax or capital gains tax may be made at any time not later than five years after the 31st January next following the year of assessment to which it relates.

(2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment.

Section 36 provides:

36 Fraudulent or negligent conduct

(1) An assessment on any person (in this section referred to as "the person in default") for the purpose of making good to the Crown a loss of income tax or capital gains tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than 20 years after the 31st January next following the year of assessment to which it relates

(2) ...

6. Section 95, under which the penalties were said to become exigible, provides that "where a person fraudulently or negligently delivers any incorrect return" under section 8 he shall be liable to a penalty not exceeding the difference between the taxproperly payable for the period and the tax which would have been due if the return had been correct.

The burden of proof

7. This Tribunal is charged with hearing appeals against assessments and penalties. It discharges this function by considering the evidence relevant to these issues adduced by the parties, and applying the law to the conclusions it draws from that evidence. But in tax cases the evidence in relation to certain issues is generally mainly in the possession of one of the parties only. In those circumstances the law normally places the burden of providing evidence to persuade the Tribunal on the party who has the relevant evidence.

8. Thus in relation to questions about the amount of an assessment the rule is that once HMRC have made an assessment, the amount of that assessment stands unless

the taxpayer can provide evidence to the Tribunal which convinces the Tribunal that, on balance, the assessment should be different. Section 50 TMA reinforces that requirement. The evidence may be oral or documentary; it can be first or second hand; it need not be enough to show that it is certain that the amount should be different, but it must be enough to weigh the scales in favour of the taxpayer. The more precise, the more corroborated, the more believable the evidence, the better it will serve the taxpayer's purpose.

9. In relation to some issues this 'burden of proof' – the need to provide evidence to persuade the Tribunal that, on balance, something is the case – lies on HMRC. In the case of a discovery assessment the only party who can provide evidence of whether or not an inspector made a discovery will be HMRC. The burden of proving that will therefore lie on HMRC. Likewise if HMRC rely on the fraudulent or negligent conduct of the taxpayer in order to be able to satisfy the condition in section 29(4) for the making of an assessment, the burden lies on them to show that the taxpayer was fraudulent or negligent. (See for example *Hurley v Taylor* 1999 STC 1, although that case dealt with different provisions.)

10. In this appeal the burden of proof in relation to different elements of the appeal lay on different parties:-

(i) the burden lay on HMRC in relation to the making of the discovery assessments to show that a discovery had been made, and also on them to show fraud or negligence if they were relying on section 29(4) TMA;

(ii) in relation to the amount of any assessment, the burden lay on Dr Syed to produce evidence to counter the figures produced by HMRC;

(iii) in relation to the question of Dr Syed's liability for a penalty, the burden of showing that it was more likely than not that Dr Syed had been fraudulent or negligent lay on HMRC. This was the case because, as Judge Wallace pointed out in an interlocutory direction, penalty provisions are considered criminal sanctions for the purpose of the Human Rights Act and the Convention, and thus the Tribunal is required to treat the taxpayer as innocent (or not being fraudulent or negligent) until proved, on balance, otherwise.

We have set these considerations out at length because they inform a significant part of our approach to this appeal.

The Evidence before us

11. We had two bundles of copy correspondence between the parties which included invoices and bank statements relating principally to 2004 provided to HMRC by Dr Syed. We heard oral evidence from Dr Syed and from his son Graham Syed. We also accepted the oral evidence of Mr Lloyd that Mr Preston, the officer who had dealt with Dr Syed's tax returns, had retired.

12. We find the following facts.

13. In the periods under appeal Dr Syed practised as a dentist. He was a sole practitioner. He had two surgeries, one at Forest Gate in east Londonand the other adjoining his home at Forest Road, Barkingside, a few miles away

14. Mr Preston opened an enquiry into Dr Syed's 2005/06 tax return on 9 February. He made a request for information and documentation relating to repairs, legal and professional costs, interest and finance charges, and capital declared as introduced into the business.

15. It is clear from the correspondence between Mr Preston and Lewis & Co, the Appellant's accountants, that the information he received led Mr Preston to come to the conclusion that for 2005/6 it was likely that:

1. some of the expenses deducted in Dr Syed's return as repair costs were for capital expenses, and some related, at least in part, to repairs or alterations which benefitted that part of the Forest Road premises which was Dr Syed's home;
2. some of the premises expenditure deducted in reaching Dr Syed's profits included costs of lighting, heating, rates, and insurance which were attributable to his home rather than the business use of the Forest Road premises;
3. some of the amounts shown in Dr Syed's return as making up capital introduced into the business represented income from the business;
4. some of the costs deducted as legal and professional costs were not properly deductible;
5. amounts deducted for interest paid related to interest paid on borrowings for personal rather than business purposes.

In the correspondence between Lewis & Co and Mr Preston, Lewis &Co expressed a measure of agreement that, in relation to each heading, there was an adjustment which should be made.

16. Mr Preston, having come to these conclusions in relation to 2005/6 then indicated to Lewis & Co that he would be seeking additional tax also in relation to earlier and later years of assessment. He proposed going back to 2001/2 and forward to 2006/7 and to make assessments for those years on the basis of adjustments equal to those he considered should be made under the headings above for 2005/6 adjusted by an RPI factor. Mr Preston produced calculations on this basis.

17. Dr Syed, through Lewis & Co, rejected these calculations (but did not provide a detailed rebuttal), made an offer of a payment of a smaller sum than Mr Preston had calculated, and sought a meeting. These overtures were rejected by HMRC.

18. On 8 April 2008 Mr Preston sent to Dr Syed notices of assessment for 2001/2 to 2004/5 and for 2006/7, and on 5 August 2008 sent a closure notice in relation to his enquiry for 2005/6 making amendments to his self assessment for that year.

19. In making the assessments Mr Preston assumed that the errors he had identified in relation to 2005/6 had been repeated in the other years.

20. In a letter of 5 August 2008 Mr Preston describes the assessments as "the protective discovery assessments and jeopardy assessment issued on 7 & 8 April 2008".

21. Penalty determinations for all the years were issued by Mr Preston on 9 September 2009.

22. In the relevant years Dr Syed was in receipt of an NHS pension. He had received a substantial lump sum under that pension scheme. Amounts in respect of his pension appear in his bank accounts in 2004 and have not been returned separately from his business income. We accept that Dr Syed made payments derived from his pension lump sum to his bank accounts but there was no evidence before us which enabled us to conclude that Mr Preston's adjustment which treated certain amounts declared as capital introduced into the business as undeclared income should be changed because of these payments.

HMRC's Arguments

23. Mr Lloyd us that HMRC had revised downwards the adjustments comprised in Mr Preston's assessments and amendment. The amounts now sought are shown in the table below:

	2002	2003	2004	2005	2006	2007	
Adjustment							
Repairs	344	3395	3186	7749	19701	6613	
Private Premises Costs	3897	3956	4079	4181	4314	4424	
Unrecorded Income			9639	9879	10,193	10,453	
Legal/Professional Costs					910		
Interest etc				6099	8842	10,188	
Total	4241	7351	16,904	27,908	43,960	31,678	**132,042**

Tax Due	1919.66	3019.60	6979.40	11502.84	8437.00	314.44	**32,171.94**
Penalty 20%							**6,434.38**

24. Mr Lloyd says that the adjustments sought for the years before and after the year of enquiry are justified by the "presumption of continuity" for which he relies on *Jonas v Bamford* 51 TC 1.

25. Mr Lloyd says that Dr Syed's failure to return the correct amounts of income and expenditure was clearly negligent conduct. No excuse had been proferred. There was no suggestion that this was a genuine error.

26. For Dr Syed Mr Lewis said:-

(i) In relation to 2005/06

(a) the disallowance of 50% of the claimed repairs was about right;
(b) that the add back of private premises costs was not disputed (Mr Lewis did not say this expressly to us, but had said this in correspondence with HMRC and did not retract this generally before us);
(c) that the figure of £10,193.38 added back as undeclared income may well have included substantial amounts which were repayments by Dr Syed's children of sums advanced to them. (Mr Graham Syed told us that he had made some repayments to his father as and when he could afford them but could not produce precise amounts or dates);
(d) that the legal/professional costs disallowance of £910 was not disputed;
(e) that in relation to the interest/bank charges disallowance he did not believe that his client had sufficient evidence to rebut HMRC's figure.

(ii) In relation to other years:-

(a) whilst he accepted a 50% disallowance for repair in 2005/06, why should it be the same in the prior years?
(b) a receipt for £5,234.60 of 9 January 2004 may well have related to costs of building of an extension in the 2004/05 year, but the disallowance made was £7,749;
(c) Mr Syed had had to extend his Forest Road premises to find room to keep his records;

(d) Mr Preston did not ask for evidence relating to prior years;

(e) HMRC had ignored their request for a meeting and for the case to be dealt with by someone near London; and

(f) he had been told that when the case was being prepared for the Tribunal hearing, the officer so doing was not happy with the case. However neither he nor Dr Syed had kept any record of this conversation.

27. More generally Mr Lewis said that he felt that they had been pressurised by HMRC to agree to figures and to the making of assessments going back for several years.

Discussion

(a) 2005/06

28. The first issue for us here is whether or not to uphold the amendments made to Dr Syed's self-assessment. The only precondition for the making of such amendment is that an enquiry is open for the relevant year: that was the case. The only question therefore is whether the evidence presented to us was sufficient to enable us to conclude that the amendments were wrong.

29. In relation to the questions of repairs and premises costs there was no evidence before us which even suggested that Mr Preston's adjustments were wrong. There was no evidence that the disallowed expenses had in fact been of a revenue rather than a capital nature (in fact the copy invoices suggested the reverse). Dr Syed's explanation of the need to use domestic space to store business records could point to some expenditure having a business purpose but it was at best irrelevant to the question of whether the expenditure was revenue rather than capital. And Mr Lewis did not seek to persuade us that those figures were wrong.

30. The only evidence before us in relation to the sum of £10,193 added back as additional income was Dr Syed's evidence that he had advanced monies to his children and Mr Graham Syed's evidence that he had repaid monies to his father. Dr Syed also said in evidence that he had lent his daughter some £15,000 about four years ago in connection with her university course, and that she had repaid "several thousands" of this sum. But there was no evidence as to when these payments had been made by either of Dr Syed's children. We were offered no way to trace these payments into Dr Syed's bank statements. We could not conclude that it was more likely than not that any part of the £10,193 represented repayments made in 2006/07. Had we been shown payments on specific dates of money out of Mr Graham Syed's bank account and corresponding receipts in Dr Syed's bank account, we would have been convinced. Had we been given a list of dates and amounts confirmed by Dr Syed and with evidence from his family in some form we could have been convinced. But what we had was hopelessly insufficient to reach a conclusion, on balance, that the £10,193 was not business income.

31. There was no evidence to suggest that the disallowance of £910 of legal and professional fees was wrong. Nor did Mr Lewis contend otherwise.

32. Dr Syed explained to us that after the first couple of years his patients' registrations and treatment had seriously declined. His income had fallen substantially. His tax returns show a reduction in declared fee income from £130k for 2001/02 to £71k for 2006/07. After Mr Preston's add back the gross income for 2005/06 would be £107k. We accept that there was a fall in his fee income in this period. We accept that his business was less profitable in later years. But there was no evidence before us to indicate that the loans taken out by Dr Syed had been taken out to finance business expenditure rather than his own personal expenditure (or his drawings from the business accounts). We could not conclude that it was likely on the evidence before us that more of the interest and finance charges had been incurred for business purposes than Mr Preston had allowed. And in fact Mr Lewis did not seek to persuade us otherwise.

33. Thus on the evidence before us we could not conclude that Mr Preston's amendments were excessive or wrong.

34. We therefore confirm the amendments to the 2005/06 self-assessment sought in the table above.

(b) 2001/02 to 2004/05

35. For these years three questions arise: (i) did Mr Preston make a discovery that insufficient tax had been assessed, (ii) if so, was that shortfall due to the fraud or negligence of Dr Syed, or alternatively, would the inspector have been unable to have made the discovery on the information available to him in and with the tax return, and (iii) if so, whether the amounts assessed were wrong.

(i)Discovery

36. It was clear to us that Mr Preston's enquiry into 2005/06 had revealed newly to him that there were errors in Dr Syed's tax return for that year. There was to our minds, no doubt that he had made a discovery in relation to that year that Dr Syed's self assessment was insufficient. But the question is whether he made such a discovery in relation to the earlier years.

37. In relation to the earlier years the correspondence shows that Mr Preston assumed that the same errors had occurred relying on the "presumption of continuity". This phrase is taken form the judgment of Walton J in *Jonas v Bamford* :

> "...once the inspector comes to the conclusion that, on the facts which he has discovered, Mr Jonas has additional income beyond that which he has so far declared to the Inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer."

38. In our view this quotation expresses no legal principle. It seems to us that it would be quite wrong as a matter of law to say that because X happened in Year A it must be assumed that it happened in the prior year. An officer is not bound by law and in the absence of some change to make or to be treated as making a discovery in relation to last year merely because he makes one for this year. This tribunal is not bound to conclude that what happened this year will happen next year. It seems to us that Walton J is instead expressing a commonsense view of what the evidence will show. In practice it will generally be reasonable and sensible to conclude that if there was a pattern of behaviour this year then the same behaviour will have been followed last year. Sometimes however that will not be a proper inference: there will be occasions when the behaviour related to a one off situation, perhaps a particular disposal, or particular expenses; in those circumstances continuity is unlikely to be present. In the circumstances of *Jonas v Bamford* there had been undeclared income in a particular year: it was not unreasonable to conclude that the same habit of concealing income had been followed in previous years.

39. In this case it is clear that Mr Preston came to the conclusion that it was likely that what had happened for 2005/6 had happened in previous years. There was nothing in the evidence before him to suggest to the contrary. He therefore can be said to have made a discovery that there had been a shortfall in the tax assessed for those years.

(ii) *The Conditions for Assessment*

40. Mr Preston was entitled to assess if either of the conditions in section 29(4) or 29(5) were satisfied. In our view the condition in section 29(5) was satisfied. The returns made by Dr Syed contained no information in addition to the declarations of the amounts of expenditure under various heading and the amount of capital introduced into the business. An officer could not reasonably be expected to have been aware of the shortfall in the tax assessed on the basis of that information. At the time when Mr Preston made the assessment the enquiry window had closed.

(iii) *The Amounts assessed*

41. There was no evidence before us which suggested that the adjustments sought by HMRC were wrong. We repeat the remarks in paragraphs 28 to 31 above. The onus is on the taxpayer to provide something which upsets HMRC's figures.

(c) 2006/7

42. We have separated our consideration of this assessment because it is unusual. This assessment was made on 8 April 2008, some two months after the last date on which the return was due to be made. It was therefore made within the period in which an enquiry could have been opened into the taxpayer's return. The overall scheme of the legislation suggests that if an officer has a concern about a return and is able to enquire into the return then the ordinary course would be to open such an

enquiry and make any adjustment on its closure, rather than seeking to make a discovery assessment under section 29. That (ordinary) course would enable adjustments to be made on the basis of information which could be obtained in the enquiry.

43. The seemingly unorthodox procedure adopted by Mr Preston raises the same questions in relation to the operation of section 29 as those discussed above in relation to the earlier years: was there a discovery? Were the conditions for assessment satisfied? And was the amount of the assessment disproved by the taxpayer's evidence?

44. As to whether Mr Preston made a discovery, the answer is the same as that above. It seems to us that he did conclude that it was likely that the self assessment for this year did under-assess the tax due.

45. But for this year the condition in section 29(5) could not have been satisfied. That condition can only be satisfied when "at the time when an officer of the Board ...ceased to be entitled to give notice of his intention to enquire into the return" the officer could not reasonably have been expected to have been aware of the deficiency. It is not possible to treat that condition as satisfied prospectively. It is not possible as a matter of language to say that this condition can be satisfied before the expiration of the enquiry window. Nor, given the right of a taxpayer to amend his return in the 12 months after the filing date, could the condition be satisfied before the expiration of that period.

46. Thus the assessment could be made only if the condition in section 29(4) was satisfied, that is to say if there was an under assessment attributable to fraudulent or negligent conduct on the part of Dr Syed or his advisers. The onus was on HMRC to prove such fraud or negligence before us.

47. What evidence did HMRC have to offer? They say that the 2005/6 self assessment was an under assessment and that one should therefore presume that the 2006/7 self assessment would be too. They then say that on that presumption Dr Syed made errors in 2006/7 for which there is no explanation other than negligence. Effectively they say that the presumed errors speak for themselves.

48. Dr Syed's returns show the following:

	2005/6	2006/7
Capital Introduced	84,000	78,588
Repairs	36,477	39,402
Premises costs	11,886	13,237
Interest etc.	13,021	12,906

These figures suggest that the practices and approaches used in compiling Dr Syed's tax returns for 2006/7 were similar to those used in 2005/6. For 2005/6 Dr Syed put forward little argument that the figures in his returns had been correct. Indeed even

before us Mr Lewis accepted that some adjustment was necessary. We therefore think it likely that the 2006/7 figures were wrong and as a result that his self assessment understated his tax liability. (Dr Syed's return showed that he had made a loss for this year which was offset against his other income in his self assessment: the reductions in that loss which result from the adjustments sought by HMRC result in greater taxable income. We think it likely that the size of the adjustments needed would so reduce the claimed loss that his taxable income would have been increased.)

49. Were these errors in Dr Syed's reported figures errors which a reasonable man guided by those considerations normally regulate the conduct of human affairs would have made? Those considerations include in our view a proper regard for the necessity of reporting the whole of one's income, differentiating between capital and revenue expenditure as far as one is able, and the excluding expenditure incurred for personal purposes. Those things were not done in Dr Syed's return for 2006/7. There was therefore negligent conduct in the delivery of the return and that negligent conduct gave rise to the under assessment of tax for that year.

50. We therefore find that the condition in section 29(4) was satisfied.

51. So far as the figures go, the position is the same as that in relation to the earlier years. There was no evidence on which we could conclude that they were wrong.

52. We therefore confirm the 2006/7 assessment.

Penalties

53. For the reasons explored in paragraphs 48 and 49 above in relation to 2006/7 it seems to us that Dr Syed's returns for the earlier years were also negligently made. The returns we have held were incorrect. Therefore a penalty may be imposed under section 95. The maximum amount of that penalty is the difference between the tax due had the return been correct and the tax actually due. HMRC mitigated this penalty by 80%. We see no reason to change the level of mitigation applied.

Other Matters

54. We should set out our conclusions on the specific submissions made by Mr Lewis and recorded at paragraph 26 above:

(a) there is no reason why, because a 50% disallowance was accepted by Mr Syed for 2005/6 it should be the same for other years. But it is up to the taxpayer to produce evidence of what the relevant figure should be. No evidence was produced which enabled a different figure to be computed;

(b) the receipt for £5,234.60 for 9 January showed that a capital expense in that amount had been incurred. The disallowance was greater than that. It is up to the taxpayer to provide evidence to show that all the other amounts claimed were of an income nature and were for the purposes of the business. There was no evidence put before us which would have enabled us so to conclude;

(c)Dr Syed may well have needed to extend his premises to make room to keep his records. That may indicate that some of his expenses were for the purposes of his business, but not only does it also suggest that the expense was capital in nature and thus not allowable, but no evidence was put before us to help us to decide what portion of the expense was attributable to such a business purposes and what was for other purposes.

(d) Mr Preston did not it seems ask for evidence about earlier years. But the taxpayer could have produced that evidence to us. The taxpayer has his chance at the hearing of the appeal to put forward anything he thinks is relevant to the computations. If his evidence is good the tribunal is likely to find for the taxpayer. But we were given no evidence: no receipts, no analysis, no plans, no photographs, no alternative calculations.

(e) HMRC may well have ignored the taxpayer's request for a meeting. But that is irrelevant to our job. We are required to determine whether tax has been assessed in accordance with the Acts of Parliament. Those Acts do not require the amount of tax to be changed depending on whether or not HMRC agreed to a meeting.

(f) An HMRC officer may well have been unhappy with the case. But the decision in the appeal is not that of HMRC but that of the tribunal.

(g) If the taxpayer or Lewis & Co felt pressurised into agreeing figures with HMRC then they were at liberty to propose different figures to us and to try to persuade us that the evidence supported those figures. But Mr Lewis freely admitted before us that there were problems with the 2005/6 figures. Different figures and proportions were not suggested to us nor was evidence submitted to support different results. We have not relied on the concessions made in correspondence by Lewis & Co in reaching our decision, rather we have relied the admissions made before us by Mr Lewis.

Conclusion

55. We dismiss the appeals.

Rights to Appeal

56. 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.

Charles Hellier

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE:

12 MAY 2011