[2013] UKFTT 487 (TC)

TC02870

Appeal number: TC/2012/03024

INCOME TAX – ASSESSMENT AND PENALTY – ***HMRC treated a series of deposits in the Appellant's bank accounts as taxable income – the Appellant's explanations of the sources for the deposits were on the whole unconvincing – assessment reduced to £24,924.98 – penalty reduced to £11,216.23 – Appeal allowed in part.***

FIRST-TIER TRIBUNAL
TAX CHAMBER

DR JAMSHID KOHAL **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE
SONIA GABLE ATII

Sitting in public at The Nottingham MJC, Carrington Street, Nottingham on 17 July 2013

The Appellant appeared in person

Mrs Nadine Newham Presenting Officer of the Appeals and Reviews Unit for HMRC

DECISION

The Appeal

1. The Appellant appealed against the closure notice and amendment to the self assessment tax return dated 18 February 2010 for the tax year ended 5 April 2004 issued under section 28A(1) and (2) of the Taxes Management Act (TMA) 1970, and a penalty under section 95(1)(a) TMA 1970. The amount of tax due under the amendment to the return was £27,000.78 based upon taxable income of £80,438.00. The penalty was assessed at 60 per cent of the tax due, which produced an amount of £16,201.

2. On 11 January 2006 HMRC opened an enquiry into the Appellant's tax return for the year ended 5 April 2004. HMRC received the return on 11 October 2005.

3. The enquiry was prompted by the Appellant's declaration in the return that he did not work and had no other income or gain during the year ended 5 April 2004. The Appellant's declaration was incorrect. The Appellant had been gainfully employed as a civil engineer with a firm in Nottingham until 29 August 2003. The P45 for this employment showed that the Appellant received income of £8,426.56 from this employment during 2003/04. The Appellant stated that he did not work again until 1 December 2004.

4. The Appellant held jointly with his wife current and savings accounts with Barclays Bank, and a current account with National Westminster Bank. The Appellant also held an account in his own name with HSBC. The enquiry uncovered unidentified bank deposits during 2003/04 amounting to £79,466.97. HMRC took the view that in the absence of a reasonable explanation from the Appellant it was entitled to treat the unidentified bank deposits as taxable income (*Woodrow v Whalley* 42 TC 249).

5. The Appellant had come to the United Kingdom from Iran in1979 as a student. The Appellant held a Masters degree and a Doctorate in Civil Engineering. The Appellant had been employed in the UK as a research assistant and as a civil engineer. The Appellant had settled in Nottingham with his wife and two children. The Appellant retained strong ties with his native Iran, and as the eldest son he had important family responsibilities, particularly to his parents who remained in Iran. As a result of his family responsibilities and his affinity with his country of birth the Appellant made frequent visits to Iran.

6. On 18 July 2002 the Appellant purchased a new family home in West Bridgford Nottingham before he had sold his existing family home at Harrington Street. The Appellant financed the West Bridgford property with a mortgage and monies from his father-in-law. On 27 March 2003 the Appellant sold the Harrington Street property for £202,324.95. On 19 May 2003 the Appellant applied for planning permission to build a single storey extension to the West Bridgford property which was completed on 6 July 2004.

7. On 15 May 2003 the Appellant took out a loan of £150,000 with Hammonds Direct which was used to redeem the mortgage of £149,975 on the West Bridgford property.

8. The Appellant said that he took time off work from August 2003 to December 2004 to carry out improvements to the West Bridgford property with the assistance of local building contractors. During this period the Appellant stated that he financed the building works to the West Bridgford property and his lifestyle with the sale proceeds from the Harrington Street property and loans from family and friends. As part of the enquiry the Appellant supplied HMRC with details of his private expenditure during the said period, which he estimated to be £57,539.80. The Appellant informed the Tribunal that his wife did not work from August 2003 to December 2004.

9. The Appellant pointed out that the enquiry was opened almost two years after the end of the tax year 2003/04 and took some four years to complete involving three different HMRC Inspectors. The Appellant asserted that the last Inspector, Mrs Innes, the assessing Officer, had revisited decisions taken by the first Inspector, Mr Roberts. The Appellant believed that he had reached an agreement with Inspector Roberts, which would have resulted in a much lower assessment for unpaid income tax.

10. The Appellant stated that it was unreasonable to expect him to recollect the finer details of the disputed bank deposits, especially in view of the time taken by HMRC to complete the enquiry into his tax return for 2003/04. The Appellant was also hampered by the inadequacies of the records kept by his banks, and the reluctance of persons to provide him with information once they knew that it was for the tax authorities. The Appellant asserted that many of the bank deposits represented monies loaned to him by family and friends in Iran.

11. The Appellant said that he did his best to get the necessary proof to establish the source of the bank deposits which included trips to Glasgow for the purpose of securing documents to prove that he was acting as a consultant to overseas students. The Appellant indicated that it was extremely embarrassing for him to ask family members to confirm the money loans, which caused him and his family dishonour in accordance with his cultural standards. The Appellant stated that during the enquiry he spent a significant time in Iran to care for his mother who was suffering from a chronic illness. Also in this period his father and one of his brothers sadly passed away. According to the Appellant, his stays in Iran inevitably lead to delays in responding to questions asked by HMRC Inspectors.

12. HMRC acknowledged the length of the enquiry but pointed out that throughout it the Inspectors were in constant correspondence with the Appellant. The Inspectors had to issue several statutory requests for information. Also the Inspectors did not receive copies of the statements of the National Westminster Bank Account until January 2008.

13. HMRC contended that the Appellant had failed to demonstrate that the unidentified bank deposits had come from non taxable income sources. Further HMRC argued that the Appellant had been negligent with the completion of his tax

return which justified the issue of a penalty. Given these circumstances HMRC requested dismissal of the Appeals.

14. At the hearing on 17 July 2013 the Appellant gave evidence and an agreed bundle of documents was admitted in evidence. At the conclusion of the hearing the Tribunal reserved its decision.

The Issue

15. The Appellant had the burden of proving that the assessment was wrong. HMRC had the burden of demonstrating that the Appellant had been negligent in completing the return for the purpose of levying a penalty.

16. Essentially the dispute between the parties was one of fact. The Tribunal approached the dispute by evaluating the Appellant's explanations for each of the unidentified deposits in order to make its decision on whether the Appellant had proved on the balance of probabilities that the assessment was wrong.

The Unidentified Bank Deposits

Deposits 1 & 2: £13,500 on 4 July 2003 & £11,180 on 4 August 2003

17. The Appellant originally stated the deposits represented cash in UK Sterling brought back from Iran as loans from family members. On 7 June 2011 the Appellant changed his account by asserting that the two cash deposits were a loan from a Mr RB Joveyn, who had returned to Iran after working with the Appellant in the UK. The Appellant stated that he required the loan to fund the improvements to the West Bridgford property.

18. The loan was evidenced by a written agreement dated 1 July 2003. The agreement did not specify the addresses of the lender and borrower, and contained a typographical error in respect of the second amount stating £11,9180 rather than £11,180. The agreement stated that the loan would attract interest of nine per cent. The terms of the loan were 82 consecutive and equal monthly instalments of £400. The agreement was witnessed by Mr Joveyn's brothers who gave addresses in Gedling, Nottingham and West Bridgford.

19. On 16 June 2012 Inspector Innes wrote to the Appellant stating that she did not consider his explanation credible and requested a response to the following matters:

(1) The two cash deposits were originally said to be cash loans from family in Iran. If the loan agreement with Mr Joveyn was in existence at the time the Appellant gave his original explanation why was it not submitted as evidence?

(2) The copy loan agreement provided implied that it was made on 1 July 2003 to lend the Appellant £13,500 on 1 July 2003 and a further £11,180 on 4 August 2003. Why would a loan agreement made on 1 July 2003 also specify such a specific amount to be lent on 4 August 2003? In Inspector Innes' opinion

the agreement had all the hallmarks of a retrospective document drawn up to fit the specific deposits.

(3) The loan carried interest of 9% and repayments were to be 82 instalments of £400 with the first payment to be made on 1 August 2013. No evidence of any repayments has been seen.

(4) Why would the Appellant consider it necessary to borrow £24,680 in July and August from RB Joveyn with interest when the Appellant signed a loan agreement on 1 August 2013 with Mr B Abasspour to lend him £50,000. This was repaid on 18 November 2003 via a solicitor.

(5) The Appellant had sufficient funds in his Open Plan Savings account from the proceeds of the sale of his house to make the loans so why would the Appellant need to borrow money at 9% interest.

20. The Appellant did not provide a response to Inspector Innes' letter. At the hearing the Appellant explained that the loan was agreed orally with Mr Joveyn who arranged for the monies to be transferred into his brother's account in the UK, as Mr Joveyn was living in Iran when the loan was given. The Appellant said that in his culture if a friend or a family member needed help financially it was customary to give that help and accept the recipient's word that the loan would be repaid.

21. The Appellant accepted that the written agreement with Mr Joveyn had been drawn up after the event in order to meet HMRC's requirements of having documentary proof of the loan arrangements. The Appellant stated that he had repaid the loan on one of his visits to Iran.

22. The Appellant was unable to give a satisfactory explanation as to why he needed to borrow the money in the first place. At the time of the first deposit of 4 July 2003 he had a balance of over £100,000 in his savings account which was just after he had transferred £50,000 to J Ravandi to be used by the Appellant's wife. The Appellant also during this period loaned his friend Mr Abasspour £50, 000 to assist with his mortgage.

23. The Tribunal is not persuaded by the Appellant's explanation that the deposits of £13,500 and £11,180 constituted a loan from Mr Joveyn. The Tribunal finds that the Appellant did not require a loan from Mr Joveyn to fund the improvements to the West Bridgford property. He had sufficient funds in his savings account to carry out the works and pay for his living expenses. The Appellant also had the wherewithal to give a loan of £50,000 to his friend, Mr Abasspour.

24. The Appellant's admission that the loan agreement had been drawn up retrospectively coupled with the absence of reliable evidence of repayments cast doubt on the existence of a loan from Mr Joveyn. In the Tribunal's view, there was no need for the Appellant to create the façade of a formal agreement if the loan was genuine. HMRC had previously accepted a straightforward letter from the Appellant's father in law as sufficient proof of a £32,000 advance.

25. The Tribunal having regard to the above findings decides that the Appellant has failed to demonstrate that the deposits of £13,500 and £11,180 were not taxable income.

Deposit 3: £17,047.50 on 1 August 2003

26. The Appellant gave contradictory statements about the source of this deposit. At the meeting held on 28 June 2006 he said it was a loan to finance the improvements on the West Bridgford property. On the 14 March 2007 he supplied HMRC with a copy of the cheque for £17,047.50 that was paid into his account. On the 31 August 2007 the Appellant stated that the sum may have been a refund of tuition fees from Glasgow University in respect of an Iranian student who had asked the Appellant to receive the fees on his behalf because he did not have a UK bank account. On 25 January 2008 the Appellant named the Iranian student as Mr Reza Tajarloo.

27. On 23 July 2010 the Appellant provided a letter from a Dr S Ghasomi with an address in Tehran. Dr Ghasomi stated that he had introduced the Appellant to Mr Tajarloo to facilitate his admission to University and sort out residential matters. According to Dr Ghasomi, Mr Tajarloo gave the Appellant a cheque for £17,047.50 for which the Appellant was to provide Mr Tajarloo with the equivalent amount in Iranian currency when the Appellant was next in Iran. Dr Ghasomi also stated that he was unable to locate the current address for Mr Tajarloo.

28. When giving evidence the Appellant admitted that he had not met Mr Tajarloo. The Appellant was also vague about the actual arrangements for repaying Mr Tajarloo in Iranian currency.

29. The details on the copy of the cheque for £17,047.50 were relatively indistinct. The Appellant's bank apologised for the poor copy which was a result of the way the cheque had been scanned when processed. The details, however, revealed that the account holder for the cheque banked with Barclays at 1 Winbourne Road Poole which was the address of Barclays' support functions, Global retail and Commercial banking. The cheque was typed and made payable to the Appellant. It was not possible from the details recorded on the cheque to identify the name of the account holder, although it appeared to state *we credit your account with our London….* and below that, *on behalf of.*

30. The Tribunal is unconvinced with the Appellant's assertion that the origin of the cheque for £17,047.50 was from a non-taxable source. The Appellant changed his explanation for the source from a loan to fund improvements to the West Bridgford property to monies from an Iranian student for which the Appellant would give the equivalent in Iranian currency. The Tribunal is of the view that the circumstances surrounding the monies from the Iranian student were highly improbable.

31. According to the Appellant, he had never met Mr Tajarloo even though Dr Ghasomi said that he introduced Mr Tajarloo to the Appellant. The Appellant adduced no evidence that he had repaid the monies to Mr Tajarloo. Further there was no entry of a withdrawal of an equivalent amount to that recorded on the cheque from the

Appellant's bank accounts. Next the details on the cheque suggested that the account holder was not an individual. At one stage in the enquiry the Appellant said that the cheque may have been paid by a Scottish University. The Tribunal considers it highly unlikely that a Scottish University would bank with a branch in England.

32. The Tribunal concludes that the Appellant has failed to establish that the cheque for £17,047.50 constituted non taxable income.

Deposit 4: £7,000 on 2 October 2003

33. On the 25 January 2008 the Appellant stated that the £7,000 was cash to purchase a car which was deposited in his bank account when the car purchase fell through. The Appellant said that he had saved the £7,000 over a period of five years. He kept the money in a small safe at home along with his passports. The Appellant stated that he had accumulated the money from his occasional winnings at the casino.

34. The Tribunal was not satisfied with the Appellant's explanation about the origin of the £7,000. On 28 June 2006 the Appellant informed Inspector Roberts that he had not received any gambling wins, and that the £7,000 represented a repayment on a loan. On 31 August 2007 and 25 January 2008 the Appellant informed HMRC that the £7,000 represented cash to purchase a car, which he had saved up over five years. According to the Appellant, the cash was returned to his bank account when the car purchase fell through.

35. On 17 March 2008 Officer Roberts pointed out that the Appellant had supplied contradictory accounts of the source of the £7,000, and requested further clarification about where the money was held over five years. On 16 April 2008 the Appellant responded by stating that the money was kept in a safe along with his passports, and that the source of the money was his occasional winnings at the casino. On 28 June 2008 the Appellant provided HMRC with mandates to approach the two casinos where the Appellant allegedly gambled. One casino replied to HMRC's request for information indicating that the Appellant had gambled once in 1998 incurring a loss of £150. The Tribunal notes that the Appellant used the same explanation of car purchase for the source of the monies identified in deposits 9 and 10 (see below).

36. The Tribunal finds that the Appellant has given contradictory accounts for the source of the £7,000 deposit. The Appellant adduced no reliable evidence to substantiate the various explanations given of a loan and winnings from gambling. The Tribunal is satisfied that the £7,000 cash originated from a taxable source.

Deposit 5: £450 on 15 October 2003

37. On 31 October 2008 Inspector Innes required clarification of a deposit of £450 in the Appellant's Barclays' Open Plan savings account held jointly with his wife. The Appellant argued that it was difficult with the passage of time to remember the sources of deposits of relatively small amounts.

38. The Tribunal notes that HMRC's request for clarification with respect to this deposit was some 20 months after the opening of its enquiry, and some five years from when the sum was deposited. In those circumstances the Tribunal considers the Appellant's plea about the problems of recalling the origin of deposits of relatively small amounts reasonable. Mrs Newham acknowledged the Appellant's difficulties in this regard.

39. The Tribunal, therefore, decides to exclude the £450 from the assessment.

Deposits 6-8: £5,000 on 29 August 2003; £4,050 on 25 November 2003; and £2,500 on 2 December 2003

40. On 28 June 2006 the Appellant originally stated that the £4,050 miscellaneous credits and the £2,500 cash were loan refunds. On 29 August 2008 Inspector Innes requested the Appellant to provide copies of the loan agreements along with details of the individuals involved. Inspector Innes also sought clarification of an entry of £5,000 cash which was deposited in the Barclays Joint Open Plan Savings account on 29 August 2003.

41. On 21 July 2010 the Appellant's representative advised Inspector Innes that the above three deposits were cash in UK sterling brought back from Iran as loans from family members. According to the Appellant, there had been no trusted or reliable banking system in Iran since the Revolution, and the charges for transferring money into the UK were prohibitive. In those circumstances when the Appellant and his wife went to Iran they would bring back cash in UK sterling directly because at that time there were no restrictions on the amount of monies that could be taken out of Iran. The Appellant stated that the monies were used to fund the house extension which started early in 2003.

42. The Tribunal is not convinced by the Appellant's explanation for the sources of these deposits. He produced no documentary evidence to substantiate the existence of loan arrangements. At the time the Appellant made the deposits his balance in the joint savings account ranged over the dates in question from £60,000 to £95,000. On 1 August 2003 the Appellant lent his friend, Mr Abasspour, £50,000 which was repaid to him on 18 November 2003. Also on 1 October 2003 the Appellant borrowed £14,512 from a Mr Aghassi. In short the Tribunal is satisfied that the Appellant had more than sufficient funds to carry out the extension to his house without the need to borrow monies from family members.

43. The Tribunal also notes that the deposit of £5,000 was made on the same day as the Appellant left his employment with the Nottingham civil engineering firm which posed the possibility that the £5,000 may have been a termination payment. Finally the Appellant's explanation about the arrangements for obtaining cash in UK sterling in Iran was vague and contradictory.

44. Given the above findings the Appellant has failed to satisfy the Tribunal that the deposits of £5,000 on 29 August 2003, £4,050 on 25 November 2003; and £2,500 on 2 December 2003 were from non-taxable sources of income.

Deposits 9-10: £1,600 and £3,200 on 29 December 2003

45. On 28 June 2006 the Appellant originally asserted that the cash deposits of £1,600 and £3,200 constituted loan refunds. On 21 July 2010 the Appellant's representative stated that the Appellant had drawn out £3,230 and £2,250 on 18 and 29 December 2003 respectively in order to purchase a vehicle at a car auction. The Appellant did not buy a vehicle and re-banked the balance of the monies, £1,600 and £3,200, on 29 December 2003.

46. The Tribunal considers that the Appellant has provided a plausible explanation for the source of the deposits on the 29 December 2003. The amounts withdrawn on 18 and 29 December 2003 were closely linked in time to the disputed deposits. The respective transactions involved similar amounts of monies, and their pattern was consistent with a proposed purchase of a vehicle at a car auction.

47. The Tribunal, therefore, holds that the deposits on 29 December 2003 originated from non-taxable sources, and should be excluded from the assessment.

Deposits 11-14: £580 on 9 April 2003, £254.47 on 11 April 2003, £2,755 on 22 May 2003, and £100 deposit on 14 May 2003

48. On 30 May 2008 Officer Turnbull first queried the nature of these deposits, which related to the Appellant's joint account with his wife at the National Westminster bank. The Appellant supplied Officer Turnbull with the statements for the year 2003/04 on 25 January 2008. The Appellant also provided Officer Turnbull with a signed authority to contact the National Westminster direct.

49. The Appellant has given no explanation for the sources of these deposits. The Appellant asserted that he made enquiries of the National Westminster but the bank was unable to help.

50. The Tribunal considers it unreasonable after a period of five years to expect the Appellant to recall the sources of the deposits for the relatively small amounts of £580, £254.47 and £100. Mrs Newman for HMRC did not demur from the Tribunal's observation. The Tribunal, however, would expect the Appellant to provide an explanation for the larger deposit of £2,755 on 22 May 2003. The bank statement showed that the source of the deposit carried a sort code of 60 15 49. It would appear that the Appellant made no attempt to identify the sort code.

51. The Tribunal, therefore, decides that the Appellant has failed to persuade the Tribunal that the deposit of £2,755 came from a non-taxable source. The sums of £580, £254.47 and £100 are to be excluded from the assessment.

Deposit 15: £2,500 on 29 May 2003

52. On 30 May 2008 Officer Turnbull enquired about the source of this deposit from the Appellant's joint account with his wife at the National Westminster bank. On the 21 July 2010 the Appellant's representative said that the £2,500 deposit was re-banked money that had been drawn out on the 27 May 2003 (£3,200).

53. Mrs Newman for HMRC pointed out that the entry for the £3,200 in the Appellant's bank statement suggested that it was for a debit card purchase and not a cash withdrawal. The Tribunal agrees with Mrs Newman's observation. In those circumstances the Tribunal finds that the Appellant has not given a satisfactory explanation for the source of the £3,200 deposit.

Deposit 16: £3,000 on 18 June 2003

54. On 30 May 2008 Officer Turnbull enquired about the source of the deposit of £3,000 from the Appellant's joint account with his wife at the National Westminster bank. On the 21 July 2010 the Appellant's representative stated that the sources of the £3,000 deposit were £2,500 which originally had been drawn out of the Appellant's bank account for transfer to a cash ISA and then withdrawn, and £500 representing monies that had been re-banked following the cashing of cheques to the value of £904.19.

55. The Tribunal finds that the Appellant transferred the £2,500 into the ISA on the 4 June 2003. The Appellant adduced no evidence that he withdrew the £2,500 from the ISA account. The Tribunal considers that it was unlikely that the three cheques to the value of £904.19 had been for cash. The amounts involved with each of the cheques and their timings suggested that the cheques had been drawn to pay specific bills. Also the Appellant normally drew cash from an ATM rather than issuing a cheque.

56. Given the above findings the Appellant has failed to satisfy the Tribunal that the deposit of £3,000 on 18 June 2003 was from a non-taxable source of income.

Deposits 17- 19: £350 on 9 July 2003; £350 on 18 August 2003; and £3,500 on 19 August 2013

57. On 30 May 2008 Officer Turnbull enquired about the sources of these deposits from the Appellant's joint account with his wife at the National Westminster bank. On the 21 July 2010 the Appellant's representative stated that the source of the £350 on 9 July 2003 was cash drawn off a debit card withdrawal of £1,200 made on 25 June 2003. The representative also said that the Appellant used cash from withdrawals from his bank account on 6 and 7 August 2003 to make the deposits on the 18 and 19 August 2003.

58. The Tribunal is not convinced with the Appellant's explanations for the sources of the deposits. The withdrawals on the 25 June and 6 August 2003 were payments made by debit card which were more likely to be used to discharge bills rather than for cash withdrawals. This characterisation was particularly apt for the entry on the 6 August 2003 which was in the amount of £458.71. The Tribunal is of the view that a cash withdrawal would consist of an amount in round numbers of £ sterling. The withdrawal on 7 August 2003 comprised a cheque for £3,000. The Tribunal considers that a cheque was also more likely to be used for the payment of bills, particularly as it was drawn during the period when the building works were being carried out on the Appellant's home.

59. The Tribunal has previously given the Appellant the benefit of the doubt regarding deposits of small amounts. In this instance, however, there were two deposits of the same sum of £350 in consecutive months. The Tribunal considers that the timing of these payments in identical amounts together with the absence of a convincing explanation from the Appellant indicated that they were taxable income for work done by the Appellant. The Tribunal is also satisfied on the above findings that the larger deposit of £3,500 on 19 August 2003 originated from a taxable source of income.

Deposit 20: £550 on 20 August 2003

60. On 30 May 2008 Officer Turnbull enquired about the source of a deposit of £550 from the Appellant's joint account with his wife at the National Westminster bank. The Appellant gave no explanation for the source of this deposit. The Tribunal notes from the bank statement that this deposit was a card payment. Given that fact and the relatively small amount the Tribunal considers that it was unreasonable to expect the Appellant to recall the origin of this deposit after a period of four years. Mrs Newman for HMRC raised no objections to the Tribunal's observation. The Tribunal, therefore, excludes the amount of £550 from the assessment.

The Penalty

61. Under section 95 TMA 1970 HMRC imposed a tax geared penalty on the Appellant. The maximum penalty permissible under section 95 is 100 per cent of the tax assessed.

62. HMRC said that the Appellant had been negligent in failing to declare any taxable income on his tax return for 2003/04. In HMRC's view, the Appellant's omission was blatant particularly as he accepted that he had received earnings from his employment with the Nottingham civil engineering company which amounted to £6,421.82.

63. HMRC fixed the penalty at 60 per cent of the tax assessed after giving abatements of 20 per cent for co-operation and 20 per cent for seriousness, which resulted in a penalty of £16,201.

64. The Tribunal is satisfied that the Appellant was negligent in not declaring taxable income in his 2003/04 tax return. Under section 95 the Tribunal is entitled to take an overall view of the appropriate penalty, and not obliged to follow HMRC's approach of giving abatements for various categories of conduct.

65. The Tribunal considers that a loading of 60 per cent was high for negligent conduct. In all the circumstances the Tribunal finds that the appropriate loading was 45 per cent of the tax assessed which reduced the penalty after the adjustments to the assessment to £11,216.23.

Summary of the Tribunal's Findings and Revised Assessment

66. The Tribunal's summary is set out in the table below:

Deposit Ref.	Disputed Amount	Decision	Revised Assessment	
1	£ 13,500.00	£ 13,500.00	Profit from Self Employment	£73,432.00
2	£ 11,180.00	£ 11,180.00	Interest from bank	£ 972.00
3	£ 17,047.50	£ 17,047.50	Total income	£74,404.00
4	£ 7,000.00	£ 7,000.00	Less Personal allowance	£ 4,616.00
5	£ 450.00	£ -	Total taxable income	£69,788.00
6	£ 5,000.00	£ 5,000.00	1,960 at 10%	£ 196.00
7	£ 4,050.00	£ 4,050.00	28540 at 22%	£ 6,278.80
8	£ 2,500.00	£ -	39280 at 40%	£15,715.20
9	£ 1,600.00	£ -	972 at 40%	£ 388.80
10	£ 3,200.00	£ 3,200.00	Income Tax Charged	£22,578.80
11	£ 580.00	£ -		
12	£ 254.47	£ -	Class 4 NI	
13	£ 2,755.00	£ 2,755.00	26,325 at 8%	£ 2,106.00
14	£ 100.00	£ -	43,463 at 1%	£ 434.63
15	£ 2,500.00	£ 2,500.00		£ 2,540.63
16	£ 3,000.00	£ 3,000.00		
17	£ 350.00	£ 350.00	Income Tax and NI due	£25,119.43
18	£ 350.00	£ 350.00	Less Tax Paid	£194.48
19	£ 3,500.00	£ 3,500.00	**Revised assessment**	**£24,924.98**
20	£ 550.00	£ -	**Penalty at 45%**	**£11,216.23**
Total sum	**£ 79,466.97**	**£ 73,432.50**	**Total due**	**£36,141.18**

Decision

67. The Appellant asserted that the majority of the deposits were loans from family and friends to help him refurbish his home in West Bridgford. The Appellant referred to the cultural practice of Iranian society where loans are arranged on a personal basis without the requirement of formal documentation. The Appellant pointed to the difficulties in recalling the sources of small deposits, particularly in view of the length of time the enquiry took.

68. The Tribunal accepts the Appellant's assertions about the general nature of loan arrangements. The Tribunal, however, found that the arrangements did not have a bearing on the outcome of this dispute. The evidence demonstrated that the Appellant had more than sufficient monies to fund the building works to the West Bridgford property and his lifestyle without the need to resort to borrow monies from family and friends. The Appellant's explanations for the majority of the bank deposits were contradictory and did not make sense. The Tribunal acknowledged the Appellant's difficulties with the passage of time in remembering the details of deposits of small amounts, which has been reflected in the Tribunal's decision. The Tribunal, however, considers that these difficulties were not a barrier in providing plausible explanations for the larger deposits.

69. The Tribunal examined the evidence in turn for each of the disputed deposits, and found that the Appellant had failed to establish on the balance of probabilities that 13 deposits constituted non-taxable income. As a result of its findings the Tribunal decided the following:

(1) The taxable income in dispute is reduced from £79,466.97 to £73,432.50.

(2) The assessment is reduced from £27,000.78 to £24,924.98.

(3) The penalty is reduced from £16,201 to £11,216.23

70. The Tribunal allows the appeal in part.

71. 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.

MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE

RELEASE DATE: 10 September 2013