



**TC03151**

**Appeal number: TC/2012/09455**

*Capital Gains Tax – whether taxpayer in partnership with another – amount of gain realised by taxpayer*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ALI AL-JIBOURI**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE NICHOLAS PAINES QC  
                  DUNCAN McBRIDE**

**Sitting in public at 45 Bedford Square, London WC1 on 28 October 2013**

**S A Zubairi ACMA of Ahmed Accountants Ltd for the Appellant**

**Paul O'Reilly, Appeals and Reviews Unit, HM Revenue and Customs, for the Respondents**

## DECISION

5 1. It is not in dispute that the appellant, Mr Al-Jibouri, bought a flat in west  
London in December 2002 for £109,000, mortgaged it to Birmingham Midshires  
Building Society for £127,500 in January 2003 and sold it in November 2003 for  
£151,000, and that the sale generated a capital gain. The main issue in the case is  
10 whether Mr Al-Jibouri was acting alone when he bought the flat and realised the gain  
or whether, as he has told us, he was acting as proxy for or in partnership with  
another. Though the evidence is unsatisfactory, we find on the balance of  
probabilities that Mr Al-Jibouri was acting in partnership with a Mr Al-Alawati.

15 2. The next issue is what the terms of the partnership were. Again the evidence is  
unsatisfactory: it has varied between saying that Mr Al-Jibouri was acting as proxy  
for Mr Al-Alawati (so that the whole gain was Mr Al-Alawati's) and saying that the  
gain belonged to the two of them equally; the evidence about the flow of payments  
both at the time the flat was bought and at the time it was sold is very far from  
complete. We consider the most reliable evidence of the respective partners'  
entitlements as between themselves to be an agreement between them that was put in  
20 evidence, according to which (we find) 50% of the part of the gain attributable to Mr  
Al-Alawati's contribution of £50,000 was his. We state our findings on this in greater  
detail later in this Decision.

25 3. The third issue is the quantum of the allowable deductions in computing the  
gain. As to that, we find that two of the three alleged invoices put in evidence are not  
genuine. We agree with HMRC's computation of the gain realised on the sale of the  
flat, but allow the appeal to the extent of holding that Mr Al-Jibouri is only liable for  
capital gains tax on his share of the gain, which we provisionally calculate later in this  
Decision.

### **The history**

30 4. In 2009 HMRC began to investigate Mr Al-Jibouri's tax affairs, having learnt of  
his apparent receipt of rental income and sale proceeds from the flat. They required  
him to complete a tax return for 2003-2004, which he did in June 2009. The return  
declared rent received of £5,460 and expenses of £10,819, and no other income or  
capital gains. There was no suggestion that the trading loss was anyone other than Mr  
35 Al-Jibouri's. At the same time, his then accountants wrote to HMRC saying that the  
flat had been let from March until August 2003 and sold in October 2003, that it was  
purchased with a building society mortgage of £127,107 and that it was the only  
property owned to be rented out by Mr Al-Jibouri.

40 5. Noting the possibility of a capital gain, HMRC opened an enquiry into the  
return and, after an informal request for information had gone unanswered, issued a  
notice requiring information about rental income, expenses and capital gains. The  
officer acting was Mr Stephen Mitchell, who gave evidence to us. His notice  
generated a response from the accountants then acting dated March 2010; this

enclosed a builder's bill for £4,050 and a mortgage statement and said that a capital gains computation on the flat had not been done because Mr Al-Jibouri was not aware of the need for it and did not take professional advice. The bill was from a Mr Abbass Al Iami and dated 1/10/03. The narrative was:

5           Repair and redecorated the property ....

Work carry as below

- (1) Remove all the carpet and replace it by new laminated floor (kitchen, bedroom, dining room, bathroom and the corridor ... £2,000
- (2) Put new units with new sink at the kitchen ... £1,250
- 10       (3) Fit all the windows (kitchen, bedroom, reception) ... £450
- (4) Remove all the rubbish and give the flat very clean tid[y] ... £350

Note: all materials and work labour are including at this price ... Total £4,050.

6. Mr Mitchell chased the then accountants for a capital gains computation, which they produced in April 2010. This gave the purchase price as £109,000 and the sale  
15 proceeds as £150,000 (in fact they were £151,000); after deducting various expenses and the capital gain allowance, the computation showed a taxable gain of £24,495. Mr Mitchell queried some aspects of the calculation, in respects that do not presently matter. There followed a conversation between Mr Mitchell and the accountant in  
20 May, in which the accountant repeated that her client had been unaware of the need to declare the capital gain on his tax return. Settlement of the enquiry by means of a letter of offer was discussed. In June Mr Mitchell followed this up with a letter to Mr Al-Jibouri and the accountants enclosing his calculation of a gain of £29,400. The accountants responded with a calculation yielding a gain of £25,334 and tax of £4,870, together with some supporting documents. Mr Mitchell disagreed with the  
25 calculation in one respect and in response calculated a gain of £26,084.

7. The next communication was a telephone call from Mr Al-Jibouri to Mr Mitchell on 13 July 2010, in which Mr Al-Jibouri said he had not heard from his accountants since May, was not happy with them and was looking for a replacement, but would like to settle the enquiry; he offered £4,000 without penalties or interest. A  
30 discussion ensued in which Mr Al-Jibouri accepted Mr Mitchell's calculation of the gain at £26,084.

8. Mr Mitchell followed up the conversation with a letter of 6 August attaching a calculation of the gain and seeking further information relevant to whether the penalty should be mitigated. Mr Al-Jibouri responded on 23 August, enclosing a further  
35 document which he said related to the flat. It was from a Mr Abid Faylly and dated 15/10/03; it acknowledged receipt of £5,900 for work at the flat. The breakdown included items as follows: "repair the walls dining and bedroom and plaster them"; "tile the ground and walls" in the bathroom and kitchen; a new front door; and new kitchen and bathroom windows. Shortly afterwards Mr Al-Jibouri provided an

explanation of his failure to make a tax return at the time, saying that he was not aware of the need. Mr Mitchell responded repeating his request for additional information about the failure.

9. This generated a response from Mr Zubairi of the firm now representing Mr Al-Jibouri, together with a signed form of authority. Reverting to the questions in Mr Mitchell's letter of 6 August, Mr Zubairi said that Mr Al-Jibouri had not shown a capital gain on the tax return he had completed because "our client was only a custodian of the said property on behalf of a foreign national and thus thought he was not supposed to inform [HMRC]". The tax return had been completed by the previous accountants, who had told Mr Al-Jibouri verbally that "everything was OK"; they were made aware of all the relevant facts about the property sale. The letter went on to say that the flat had required a great deal of improvement and £15,000 had been spent on it, reflected in the sale price achieved. The letter concluded by saying that Mr Al-Jibouri "will endeavour to retrieve the proper invoice, not the one he sent you recently".

10. In October Mr Mitchell asked for evidence of the alleged expenditure by 1 November; not having received it, he issued a notice to produce it by 12 January 2011. A final warning issued in February generated a response dated 17 February, saying that Mr Al-Jibouri had managed to trace the builder, who had supplied a copy invoice dated 15 January 2003. The copy invoice bearing that date named the builder as Abid Faylly and said

TO CARRY OUT THE FOLLOWING WORK AT [THE FLAT]

Installation of Double glazing on one main door and three windows.

Removing the old kitchen and bathroom and fitting the new kitchen and installing new bath room.

Installing new Central Heating system with a Valliant (*sic*) boiler and 3 radiators

All for the price of £14,950.00

11. Mr Mitchell queried this, saying that the telephone number on the invoice belonged to a nursery school and pointing to the invoice of 1 October 2003, also for a new kitchen; he asked for more information about the builder and for evidence of the payments. The response was that the builder had left the United Kingdom some time ago; part of the January work had proved to be defective and had had to be redone in October by another builder; the builders were paid in cash. The letter also complained of the length of the investigation. There was further debate of these points in correspondence.

12. In August 2011 Mr Mitchell returned a telephone call from Mr Zubairi; in their conversation Mr Zubairi explained that Mr Al-Jibouri had bought the flat on behalf of someone from Iraq, who had provided the funds. A confirmatory letter of the same date said that Mr Al-Jibouri had "bought the said property in a 'partnership' with" a

Mr Al-Alawati at a time when it was difficult for Iraqis to invest outside Iraq. The letter continued “Mr Al-Alawati lent our client £50,000 to invest as a 50% partner of any profits arising out of the investment”; it enclosed a copy of an agreement in Arabic and an English translation and said that Mr Al-Jibouri was not the sole beneficiary of the rental income or the profit on sale but “since most of the documents were taken by Mr Al-Alawati it is not possible to provide these and information”.

13. The translation of the agreement (whose accuracy as a translation HMRC accept) gives the date of the agreement as 15/2/02 and reads as follows:

An agreement has been reached between the following two Parties:

10 The First Party: Sajad Mohammed Al-Alawati

The Second Party: Ali Al-Jibouri

For the operation of a sum totalling to £50,000 (fifty thousand Pounds)

15 The sum of fifty thousand pounds is to be given by the First Party to the Second Party on the agreement that the First Party will receive 50% of the net profits. If the First Party wishes, at any time, to retrieve the sum of £50,000.00 he will have to notify the Second Party three months before.

Upon the above, the Agreement had been concluded.

[Signatures and a witness]

14. Mr Mitchell then asked for various pieces of information about the agreement, its background, its relationship to the building society mortgage and the money flows involved. He was told that Mr Al-Alawati had been visiting London frequently, staying at different hotels. Mr Al-Jibouri was introduced to him by mutual acquaintances. Mr Al-Alawati paid the bulk of the £50,000 to solicitors and a small amount in cash to Mr Al-Jibouri. A copy of the completion statement relating to the sale was produced but the letter said that “All relevant documents were taken by Mr Al-Alawati since he was the real owner of the property in question”. Mr Mitchell asked for further information and issued a notice to provide information, including the identity of the solicitors who received Mr Al-Alawati’s £50,000 and a letter from them giving details of their instructions in relation to it and how they applied it, together with annotated bank statements.

15. The response was that Mr Al-Jibouri had received the money from Mr Al-Alawati in instalments over about one year and that Mr Al-Jibouri had started looking for a property once the amount deposited with him reached £50,000. “The person” at the solicitors seemed to have left the company, so that it was not possible to get the information requested. Bank statements could not be produced since the bank had told Mr Al-Jibouri that they did not keep records for more than six years; Mr Al-Jibouri was prepared to authorise HMRC to contact the bank directly. The letter concluded by saying that matters were going round in circles and Mr Al-Jibouri would prefer Mr Mitchell to issue an assessment which he would appeal against.

16. Mr Mitchell responded in a detailed letter to Mr Al-Jibouri explaining his inability to verify the role of Mr Al-Alawati or the further expenses claimed and stating his intention of assessing Mr Al-Jibouri to capital gains tax of £5,010.80 on a capital gain of £26,084. He also wrote inviting Mr Al-Jibouri to a meeting to discuss the issues, asked for a statement of Mr Al-Jibouri's assets and liabilities and indicated his intention of imposing a penalty of 25% of the additional tax due. In the light of the information in the statement of assets and liabilities he later withdrew the threat of a penalty and said that in the light of this there was no need for a meeting but that he would hold one if Mr Al-Jibouri wished.
17. No meeting took place. Mr Mitchell's decision was upheld on internal review in August 2012 and this appeal was brought. The grounds were that capital expenses incurred were not accepted by HMRC and that Mr Al-Jibouri was not the owner of the flat but was acting as proxy for a friend in Iraq.

### **The parties' contentions**

18. For Mr Al-Jibouri, Mr Zubairi submitted that the flat had been bought in partnership by Mr Al-Jibouri and Mr Al-Alawati and that all the work referred to in the builders' invoices had been carried out. The profit on the sale of the flat in under two years from its purchase testified to the fact of improvements having been carried out, as detailed in the invoices. He drew our attention to the agreement between Mr Al-Jibouri and Mr Al-Alawati and submitted that Mr Al-Jibouri's liability was for tax on one half of the gain (as recalculated taking into account all the expenditure), but that it would be harsh if Mr Al-Jibouri, who was living on social security benefit, were required to pay anything.
19. Mr O'Reilly relied on HMRC's statement of case and called Mr Mitchell, who had supplied a witness statement, to give evidence. Mr Mitchell was (perfectly understandably) unable to provide any information beyond that contained in the documents; he defended his decision to treat the whole gain as Mr Al-Jibouri's on the basis that the documentation relating to the purchase, mortgaging and sale of the flat showed Mr Al-Jibouri alone as the client and recipient of the mortgage money and sale proceeds and that it had not been possible to verify the alleged involvement of Mr Al-Alawati. He defended his decision to allow only the capital element of the expenditure evidenced by the builder's invoice of 1 October 2003 (£2,000 for laminated flooring: see paragraph 5 above) on the grounds that it was implausible that the work evidenced by the other builders' invoices had been carried out as well, given that much of it duplicated the work covered by the 1 October invoice. He rejected the suggestion that the work evidenced by the 15 January 2003 invoice had been done defectively; the same builder (Mr Faylly) had allegedly been engaged to do more work in October (see the 15 October invoice at 10 above) at much the same time as another builder was allegedly rectifying Mr Faylly's earlier defective work. He added that neither builder could be traced and that the telephone number attributed to Mr Faylly in fact belonged to a nursery school.
20. Mr Al-Jibouri gave evidence and was cross-examined. He said that he had met Mr Al-Alawati in London. They became the best of friends; Mr Al-Jibouri trusted Mr

Al-Alawati. Mr Al-Alawati had money in his bank account in London; he gave the money to Mr Al-Jibouri who put it in his bank account. The arrangement was that Mr Al-Jibouri would “pay him 50/50” despite Mr Al-Jibouri doing all the work. The money raised by the mortgage was spent on the flat. Mr Al-Jibouri shared the proceeds of sale with Mr Al-Alawati, who took most of the paperwork as proof that Mr Al-Jibouri had played his part and as evidence of what Mr Al-Jibouri had spent.

21. In cross-examination Mr Al-Jibouri said that he had himself borrowed about £50,000 from National Westminster Bank under three personal loans, one in the name of his wife. The remainder of the purchase money came from Mr Al-Alawati’s contribution and some other money that Mr Al-Jibouri had. His evidence as to when he repaid Mr Al-Alawati was equivocal, sometimes saying that he repaid him £50,000 when the proceeds of the mortgage arrived, at others saying that he repaid him in December 2003, after the sale of the flat. Mr Al-Jibouri accepted that, on that second basis, he himself had about £100,000 of the funds raised by the mortgage in his own bank account until the flat was sold. This money, he said, had been kept to buy another property, but that did not happen. Regarding the builders, Mr Al-Jibouri said that he last saw Mr Faylly in the street eight months ago; Mr Faylly had told him that he no longer lived at his 2003 address.

### **Our decision**

22. There are evident inconsistencies between things said by or on behalf of Mr Al-Jibouri during the course of this investigation and appeal.. One of Mr Zubairi’s letters virtually admitted on Mr Al-Jibouri’s behalf that the invoice submitted to HMRC by Mr Al-Jibouri was not the ‘proper’ one: see paragraphs 8 and 9 above. We do not accept that the invoice dated 15 October 2003 produced in August 2010 (paragraph 8 above) and the invoice dated 15 January 2003 produced in February 2011 (paragraph 10 above) are genuine, for much the same reasons as troubled Mr Mitchell.

23. In short, we do not find it plausible that Mr Al-Jibouri had new windows and a new kitchen fitted at the flat by Mr Faylly in January 2003 and then had new windows and a new sink and kitchen units fitted by Mr Al Iami in September/October 2003. Nor do we find it plausible that Mr Al-Jibouri was paying Mr Al Iami in October to rectify alleged defective work by Mr Faylly in January, at the same time as paying Mr Faylly to do other work. Nor do we find it plausible that Mr Al-Jibouri paid an invoice from Mr Al Iami dated 1 October 2003 for laminated flooring in the kitchen and bathroom at the same time as paying an invoice from Mr Faylly dated 15 October 2003 for tiling the floors of those rooms. None of the three invoices can be genuine if either of the other two is.

24. We find on the balance of probabilities that only the invoice of 1 October 2003 is genuine; it was the first to be produced, and it is plausible that the expenditure detailed in it was incurred on repairs and replacements after the tenant had left. The invoice of 15 October has been disavowed on Mr Al-Jibouri’s behalf in correspondence; as regards the 15 January invoice it is not in our view plausible that, having produced to HMRC false invoices each for around £5,000, Mr Al-Jibouri later produced a genuine invoice for £14,950.

25. We also note the absence of any corroborating evidence in the form of, for example, bank statements evidencing withdrawals of the cash allegedly handed over. Despite the suggestion in earlier correspondence that the bank no longer had records, there was some suggestion before us that the records did still exist, in that we were  
5 invited to order the bank to produce them (which we declined, at this advanced stage in the appeal, to do). Whatever the true position concerning the availability of bank records, we are left with implausible evidence which has no external support.

26. Mr Mitchell has taken the view that the only element of the 1 October invoice that was capital expenditure is the laminated flooring – an improvement. The test in  
10 s 38 of the Taxation of Chargeable Gains Act 1992 is whether the expenditure was incurred “wholly and exclusively ... for the purpose of enhancing the value of the asset”. There is no reliable evidence about the purpose for which the expenditure in the 12 October 2003 invoice was incurred apart from the evidence, which we find not to be true, that the new windows and kitchen units were to rectify Mr Faylly’s earlier  
15 defective work. We find that in the circumstances Mr Mitchell’s spontaneous acceptance that the replacement of carpet by laminated flooring was done for the statutory purpose showed a fair-minded approach. We therefore uphold Mr Mitchell’s assessment of the capital gain.

27. We turn to the involvement of Mr Al-Alawati. In that regard it has been said  
20 that documentation requested by HMRC could not be produced because it had been given to Mr Al-Alawati; nevertheless, Mr Al-Jibouri described Mr Al-Alawati as a good friend of his. If that is true, we do not understand why Mr Al-Jibouri could not ask Mr Al-Alawati for copies if he wished to assist the tribunal to get a full and clear picture. We also note that Mr Al-Alawati’s role was not mentioned at all by the first  
25 firm of accountants, although Mr Al-Jibouri allegedly told them everything.

28. We nevertheless find it to be more probable than not than Mr Al-Alawati did contribute £50,000 on the terms of the agreement discussed at paragraphs 12 and 13 above. This mainly because, having seen and heard Mr Al-Jibouri, we find it more probable that a third party contributed to the purchase cost than that Mr Al-Jibouri  
30 raised a sum in excess of £100,000 on his own. That being so, we find it more probable that the agreement produced to us did govern the arrangements than that they were of some other character. As regards the silence of the first firm of accountants about this, we are not persuaded that Mr Al-Jibouri told the first accountants of the arrangements; even if he did, their relative informality may have  
35 led those accountants (whose correspondence shows a generally cautious approach) to think that they did not have any impact on Mr Al-Jibouri’s tax position. We suspect that the failure to produce any further documentation was motivated by a desire to conceal from us the true proportions in which the proceeds of the venture were shared.

40 29. Given the state of the documentation, we are not surprised that Mr Mitchell found Mr Al-Alawati’s role not to have been verified. We have had the advantage, which Mr Mitchell did not, of having received oral evidence from Mr Al-Jibouri.



30. Not only was there no documentary evidence of the passing of money between Mr Al-Jibouri and Mr Al-Alawati; the oral evidence was imprecise. Mr Zubairi opened the case on the basis that the whole of the gain was Mr Al-Alawati's while Mr Al-Jibouri spoke, rather imprecisely, of 'paying 50/50'. Making the best we can of the evidence, we find it most likely that Mr Al-Jibouri and Mr Al-Alawati adhered to the terms of the agreement, which entitled Mr Al-Alawati to 50% of the fruits of his £50,000 – not the same thing as 50% of the total gain. We find therefore that Mr Al-Alawati was entitled to, and received, 50% of a sum equal to a fraction of the gain corresponding to the proportion of the total sum invested that was represented by his £50,000. We have already held that the gain is £26,084.

31. The fraction will be one of which the numerator is 50,000 and the denominator is the total sum invested. On the face of it, the denominator is 119,066 – equal to the £117,016 in Mr Mitchell's computation at page C98 of the papers plus the balance of Mr Al Iami's invoice of 1 October which, despite not being allowable for capital gains tax purposes, represents money invested in the flat.

32. By our calculations, Mr Al-Alawati's share of the gain was £5,476.79, being 50% of the product of multiplying £26,084 by 50,000 divided by 119,066. If either party disagrees with this, and/or the parties cannot agree the calculation, we shall hear further argument. The remainder of the gain (£20,607.21 by our calculations) is attributable to Mr Al-Jibouri.

33. 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.

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**NICHOLAS PAINES QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 December 2013**

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