[2016] UKFTT 0410 (TC)

TC05164

Appeal number: TC/2014/03232

Income tax - incorrect returns - HMRC amendments to self-assessment return in respect of profits of self-employment – discovery assessments - whether HMRC had incorrectly disallowed expenditure - no - whether assessments correctly calculated - yes - whether penalties correctly assessed - yes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DENISE PERRY **Appellant**

- and -

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

TRIBUNAL: JUDGE: MICHAEL CONNELL
MEMBER: ELIZABETH BRIDGE

Sitting in public at Fox Court, Brooke Street, London on 18 January 2016

The Appellant in person and Mr Stephen Stirk

Mr Maurice Chapman, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. This is an appeal by Ms Denise Perry ("the Appellant") against HMRC's closure notice and amendments to her self-assessment returns in respect of the profits of her self-employment for the 2011-12 tax year, pursuant to s 28A(1) and (2) Taxes Management Act 1970 ("TMA"), and discovery assessments raised pursuant to s 29 TMA 1970 in respect of the 2007-08 to 2010-11 tax years.

2. The Appellant also appeals against the penalty determination imposed for the submission of incorrect returns for the tax years 2008-09 to 2011-12. The penalties were raised under Schedule 24 Finance Act 2007.

3. Assessments and penalty under appeal:

Year ended	Date of tax assessment / penalty	Date of Appeal	Total tax / penalty charged	Legislation
5.4.2008	19.12.13	30.01.14	£ 2,838.92	TMA 1970 Section 29
5.4.2009	19.12.13	30.01.14	£ 3,234.58	TMA 1970 Section 29
5.4.2010	19.12.13	30.01.14	£ 5,587.09	TMA 1970 Section 29
5.4..2011	19.12.13	30.01.14	£ 1,573.72	TMA 1970 Section 29
5.4.2012	20.12.13	30.01.14	£3,399.38	TMA1970 Section 28A
5.04.09-5.04.12	19.12.13	30.01.14	£3,103.81	Finance Act 2007 Schedule 24

4. The points at issue are:

(1) whether the full expenditure claimed by the Appellant in her tax returns can be deducted from her income before tax and if not whether the Appellant understated her profits from her self-employment profits for tax years in question;

(2) whether the Appellant was careless in the completion of her tax returns and if so whether HMRC are correct to impose penalties on the Appellant for making incorrect income tax returns for the tax years in question and in what amount.

Background

5. Throughout the period covered by the decisions under appeal the Appellant was a self-employed quantity surveyor. The Appellant's Self-Assessment record shows that she commenced self-employment in September 2006 and the first return submitted was for 2006-07.

6. The Appellant's 2011-12 return was filed on 11 April 2012. A total of £16,562 was claimed as total allowable expenses against a reported turnover of £24,200. Because the Appellant had suffered Construction Industry Scheme ("CIS") tax deductions there was an

overpayment position and £4,648.43 was repaid on the Appellant's instructions into her partner's (as nominee) bank account on 17 April 2012.

7. An HMRC enquiry was opened into the Appellant's 2011-12 expenses claim on 4 April 2013. HMRC asked the Appellant for:

- Details of how her claimed expenses figure of £16,552 was calculated together with an analysis if possible.
- Receipts/invoices to support the claim
- Copy bank statements for the period 6 April 2011 to 5 April 2012 to identify the accounts out of which the expenses had been paid.

8. On 9 May 2013 the Appellant telephoned HMRC to say that she had no records as they had been disposed of when she commenced employment. She said that she had a separate vehicle for business and had calculated her expenses from actual receipts. She no longer owned the vehicle. She would be able to provide a breakdown (to follow that day) and would also endeavour to collate bank statements and whatever other supporting information she could find.

9. The Appellant provided a breakdown of her 2011-12 expenses without any supporting narrative or copy primary evidence as follows:

Rent	£2,600
Council tax	£300
Car	£7,200
Service and maintenance	£1,000
Car insurance	£420
Car tax	£280
Fuel	£970
Computer	£642
Stationery	£500
Business clothing	£950
Utilities	£1,020
Mobile phone	£300
Landline	£150
Train fares	£230
Total	£16,562

10. In the absence of any further information from the Appellant, HMRC issued an information notice to her under paragraph 1 of schedule 36 of the Finance Act 2008. The notice requested copy receipts/invoices to support the Appellant's expenses figure of £16,562 and also, for the relevant period, copy statements of all bank accounts out of which the expenses were paid, including if applicable credit card accounts. The Appellant was informed that the information was required by 8 July 2013 failing which penalties would fall due.

11. The Appellant advised that all expenses were paid through her partner's (Mr Stephen Stirk) bank account as she did not have one of her own. She provided an Excel extract of his Santander bank statements for the year 2011-12, highlighting the various payments which had been made in respect of the expenses she had claimed. The Appellant also advised that from November 2011, she was no longer self-employed but was employed by Morrison Utility Services, paying PAYE. She said that she had only claimed for a proportion of her household expenses and had identified all other payments made in pursuance of self-employment and which she believed provided an accurate statement of business expenses incurred.

12. On 15 August 2013 HMRC wrote to the Appellant saying that she had failed to keep her business expenditure records as required by Tax legislation. HMRC had therefore only been able to compare the expenses breakdown to the highlighted entries on the extracted bank statements. No prime records had been supplied. Some of the expenses claimed were not allowable and others had to be apportioned between business use and private use.

13. HMRC explained that an expense is only allowable if it is incurred "wholly and exclusively for the purposes of the trade" and "wholly and exclusively" means that when part of the home is being used for the trade then that is the sole use for that part at that time. Thus if the part of the home used for trade purposes is also at the same time used for some other non-trade purpose, no deduction is allowed. Because the Appellant had not provided any evidence that part of the home was set aside specifically for business use it was necessary for HMRC to amend the Appellant's claim on an apportioned basis.

Home expenses

The Appellant had claimed £2,600 in respect of rent, £300 in respect of Council tax and £1,020 in respect of utility costs, a total of £3,920. HMRC calculated relief for home expenses at £3,920/2 (two people sharing the home) = £1,960 x 10% =£196.

Vehicle costs

The Appellant claimed car purchase/interest costs of £7,200, insurance of £420 and tax of £280. Information from her bank suggested that monthly payments of £600 appeared to be capital loan repayments and therefore were not an allowable revenue deduction for tax purposes. The Appellant had not provided any documentation in support of her claim, but, as a concession, HMRC allowed motoring costs at 20% of claim i.e. £7,900 x 20% = £1,580.

Travel and fuel expenses

The Appellant claimed train fares - £230 and fuel - £970; these costs were allowed.

Computer and Stationery

The Appellant claimed computer expenses - £642 and stationery - £500. HMRC allowed 50% of these costs, i.e. £571.

Business clothing

The Appellant claimed £950. No evidence has been provided to support the claim. HMRC advised that claims for clothing purchases should relate to "protective" clothing only and not

those which had dual purpose. Despite the absence of supporting documentation HMRC allowed 50% of the amount claimed - £475.

Mobile Phone and Landline

The Appellant claimed mobile phone - £300, landline - £150. No supporting phone bills were provided and as the bank account is used by the Appellant and her partner HMRC were unable to determine who had incurred the costs. However, as a concession HMRC allowed the amount claimed - £450.

14. HMRC calculated the Appellant's adjusted expense claim as follows:

Rent/Council tax/Utilities	£ 196
Car/Insurance/tax	£1580
Fuel/Train fares	£1200
Computer/stationery	£ 571
Business clothing	£ 475
Mobile/Landline phones	£ 450
Total	£4472

15. The total allowable costs of £4,472 equated to 18.4% of the Appellant's turnover of £24,200. HMRC increased the percentage of allowable costs to 20% of turnover (20% x £24,200) i.e. £4,840; (the original return claimed expenditure amounting to 68% of turnover). The increase was to allow for other incidental costs such as maintenance costs claimed without supporting documentation.

16. HMRC enclosed a calculation of revised tax liability, and also warned the Appellant that she may be liable to a penalty because she had filed an incorrect return. The Appellant was invited to forward any explanation or information which might assist in mitigating any penalty.

17. HMRC also explained that as a consequence of the inaccuracies in the Appellant's returns, they were obliged to review her returns for the years 2007-08, 2008-09, 2009-10 and 2010-11. The Appellant's expenses in earlier years had been 2007-08 - 41%; 2008-09 - 32%; 2009-10 - 42.5%; 2010-11 - 100%. Because the Appellant had previously advised that she had no records to support the expenses claimed on her returns and as she did not provide evidence in support of the earlier years, HMRC issued proposals to amend the expenses claimed in line with what was proposed for 2011-12 - 20% of turnover in respect of each of those years.

18. This has led to the following adjusted expenses:

2007-08 - £44,567 x 20% = £8,913
2008-09 - £59,362 x 20% = £11,872
2009-10 - £67,570 x 20% = £13,514
2010-11 - £9,567 x 20% = £1,913

19. In addition, HMRC said that penalties would be chargeable under Schedule 24 Finance Act 2007. These had been levied at 59.5% (allowing for reductions of 10% for the quality of disclosure for telling, helping and giving) of the Potential Lost Revenue ("PLR") for each of the years concerned. HMRC did not charge any penalty for 2007-08.

20. In the absence of any further contact from the Appellant, on 12 November 2013, HMRC sent out a calculation of the penalty that would be raised in relation to 2008-9 to 2011-12.

21. On 20 December 2013, HMRC issued a closure notice in respect of 2011-12 which effectively pegged the allowed expenditure to 20% of turnover, resulting in an increase of £3,399.38 in the tax liability for that year. Also, in the absence of evidence to support claimed expenditure for tax years 2007-08 to 2010-11, HMRC issued discovery assessments for those years, totalling £13,234.31.

22. Penalty assessments were issued to the Appellant on 20 December 2013 in relation to tax years 2008-9 to 2011-12 in the sum of £8,207.87.

23. On 30 January 2014 the Appellant appealed the tax and penalty assessments.

24. On 14 February 2014 HMRC wrote to the Appellant outlining their view of the matter offering a review by an independent officer.

25. On 10 March 2014 the Appellant requested an independent review.

26. On 14 May 2014 the HMRC Officer undertaking the independent review upheld the decisions in relation to the tax assessments for all years. The reviewing Officer reduced the penalty assessment to £3,103.81, as he felt that the abatement for giving HMRC assistance during the enquiry should be increased from 10% to 30%.

27. The Appellant disagreed with the decision and lodged her Notice of Appeal with Tribunal Service.

Relevant Legislation

28. The Relevant legislation relating to amendments to self-assessments is contained in:

The Income tax (Trading and Other Income) Act 2005

Section 34(1) states:

"In calculating the profits of a trade, no deduction is allowed for-

(a) Expenses not incurred wholly and exclusively for the purposes of the trade....."

Taxes Management Act 1970

Section 12B (1) and (2) states:

"(1) Any person who may be required.....to make and deliver a return for a year of assessment.... shall-

(a) Keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period; and

(b) Preserve those records until the end of the relevant day....mentioned in Sub-section (2) below.....

(2) (a) in the case of a person carrying on a trade, profession or business alone...., the fifth anniversary of the 31st January next following the year

of assessment or (as the case may be) the sixth anniversary of the end of the period."

Section 28A states:

"(1) An enquiry ....is completed when an officer of the Board by notice informs the taxpayer that he has completed his enquiries and states his conclusion

(2) A closure notice must either –

(a) State that in the officer's opinion no amendment of the return is required, or
(b) Make the amendments of the return required to give effect to his conclusions."

Section 29 (1) states:

"If an officer of the Board discovers .....As regards any person

(a) That any income which ought to have been assessed to income tax have not been assessed, or
(b) That an assessment to tax is or has become insufficient

The officer.....may.....make an assessment in the amount, or the further amount, which ought in his opinion to be charged in order to make good to the Crown the loss of the tax."

Finance Act 2007

Schedule 24 states:

"(1) A penalty is payable by a person (P) where-

(a) P gives HMRC a document of a kind listed in the table below, and
(b) Condition 1 and 2 are satisfied.

(2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to -

(a) An understatement of liability to tax

(3) Condition 2 is that the inaccuracy was careless....."

29. The relevant legislation with regard to penalties for the submission of an incorrect return for income tax or capital gains tax is contained in s 95 TMA 1970, which states:

"95 (1) Where a person fraudulently or negligently –

(a) delivers any incorrect return of a kind mentioned in [section 8 or 8A of this Act (or either of those sections] as extended by section 12 of this Act …), or

(b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of income tax or capital gains tax, or

(c) submits to an Inspector or the Board or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax or capital gains tax, he shall be liable to a penalty not exceeding [the amount of the difference specified in subsection (2) below.]

(2) The difference is that between -

(a) the amount of income tax and capital gains tax payable for the relevant years of assessment by the said person (including any amount of income tax deducted at source and not repayable), and

(b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.

(3) The relevant years of assessment for the purposes of this section are, in relation to anything delivered, made or submitted in any year of assessment, that, the next following, and any preceding year of assessment; …"

Section 100 TMA 1970 allows an authorised Officer of the Board in making a penalty determination to set it at such an amount as in his opinion is correct or appropriate.

The Appellant's case

30. In her Notice of Appeal, the Appellant says:

i. All supporting material showing costs were submitted to HMRC in Excel format showing expenditure. HMRC are not accepting this material for no just cause, as this is a true and accurate account of expenditure for 2011-12. Whilst the bank account is in my partner's name, proof of income and refunds have been placed into this account. It would appear that HMRC are now questioning the legitimate use of this account.

ii. HMRC have only ever requested detailed accounts for tax year 2011-12. At no time has a request been made for accounts of the previous years but have made an assumption that there are issues relating to said. (sic)

iii. HMRC have repeatedly issued letters, statements of accounts and emails with inaccuracies, assumptions and accusations of wrong doing. Throughout this whole period of time, I have been forthcoming with all requests made by HMRC, and whilst I accept that the adjudicator has made reference to this and has indeed informed me that his view was there may have been a few mistakes made which was completely different to the original assessors view.

iv. Despite making tax returns as laid out, HMRC have assumed again that expenditure for year 2011-12 showed a full 12 months' worth of costings, this was not the case and all expenditure submitted only related to the period of time for self-employment. HMRC are still currently claiming for payments for NI Class 2 despite them being informed of my change of status from self-employment to employee from Nov 2011. This instance only highlights one of many discrepancies HMRC have continued to pursue whilst looking at this return. At no time have I withheld information requested, however this seems to be completely one sided.

Despite numerous requests to HMRC for further information regarding deadlines and information, HMRC have not been forthcoming.

v. I have not seen any information used to support the internal reviewer's findings.

31. At the hearing Mr Stirk for the Appellant agreed that there had been some slight errors in the Appellant's returns relating to apportionment of utilities, which he said were not contested. He argued however that the copies of his bank statements contained clear evidence of the Appellant's business expenditure. He accepted that his difficulty was because the Appellant had not kept records it was impossible to prove that expenses he had incurred were for the Appellant.

32. Mr. Stirk argued that HMRC had based their assessments on too many assumptions. There should have been a much clearer breakdown of the assessments. He said that, for example, HMRC had assumed that he was self-employed and therefore responsible for 50% of the household and other expenses.

33. Mr Stirk said that HMRC had not specifically asked for evidence of expenditure in respect of the years for which discovery assessments had been made.

34. With regard to the penalties, he asserted that the level of penalties did not reflect the Appellant's co-operation and willingness throughout the investigation to resolve the issues.

HMRC's submissions

35. The self-assessment tax regime is based on the principle that customers complete their returns fully and as accurately as possible. Before submitting their returns they should make sure that it includes all sources of income and any allowable expenses during the year. It is also expected that they read the accompanying guidance which is provided with the return and if they are unsure about an entry then they should obtain further guidance/assistance from HMRC or a professional adviser. The obligation lies with the taxpayer to submit a correct tax return.

36. It is not clear whether the Appellant read the guidance notes when completing her returns. Had she done so (which is what a prudent and reasonable person would have done) she would have seen that it was necessary to keep sufficient records to support the information entered on the return. It also made it clear that taxpayers must keep their records for at least six years in case HMRC ask to see them. Indeed, this is a requirement of legislation under s 12B TMA 1970, as amended by Schedule 37 to the Finance Act ("FA") 2008. Had the Appellant read the notes then she would have realised that she should have exercised more care when completing the expenses boxes and kept the appropriate records in support of her claim. Failure to do so would be considered careless.

37. Where an amendment is made to a return following an enquiry, the burden of proof is on the Appellant to show that the amendment is wrong and the amount by which it is wrong.

38. The legislation stipulates that an expense is only allowable as a deduction if it is incurred "wholly and exclusively for the purposes of the trade". The bulk of the Appellant's expenses claim was in respect of motor expenses and the use of her home as an office. The cost of buying a vehicle (£7,200 being12 monthly payments of £600 per month) is not an allowable

expense and neither are the travel costs between home and business. Also, if the car is used for both business and private use (which would include using the vehicle to get to work) then only the business part of the motoring costs (including insurance, tax and servicing) are allowable. Even though the Appellant has stated that this was a business vehicle, there would have been some private use.

39. The servicing, insurance and road tax total £1,700. Allowing for a private use adjustment of 20%, this would leave an allowable expense of £1,360. HMRC have by concession allowed motor expenses of £1,580. The other travel costs have been allowed in their entirety (even though it is unclear whether some of these costs relate to travel to work).

40. Similarly, although the Appellant partly worked from home, she can only claim a business percentage of the costs incurred in running that home (i.e. light, heat etc.). Only part of what she claimed in respect of use of home as office and motor expenses is allowable.

41. The Appellant no longer has the receipts, invoices or service documents to support her claim of £16,562. Without any such prime records HMRC could within legislation disallow what has been claimed in entirety. This obviously is unreasonable as it is clearly evident a self-employed person would have incurred some expense in carrying on a trade in any given year. In the absence of any evidence to the contrary, HMRC contends that the amounts assessed are reasonable.

42. The Appellant's expense claims appear excessive and are not fully supported by the schedule of costs or spreadsheet information provided. It is impossible from this evidence, (i.e. the schedule is in round sums and the extracts from the Santander bank account refers to payments made from another person's account) for HMRC to check what payments relate to the Appellant's business expenditure and what relates to private or her partner's business expenditure in order to re-construct an accurate figure of allowable expenses.

43. Therefore HMRC have to look at what information is available for the expenditure incurred and by concession allow reasonable amounts where evidence is lacking. As far as use of home as office is concerned, HMRC's calculations seem reasonable. They have taken the total costs claimed of £3,920 (rent, council tax and utilities) reduced this by 50%, allowing for the fact that her partner would reasonably pay half these costs, and then applied a 10% business usage to the balance. This would seem reasonable given the level of travel costs claimed which suggests a large proportion of the Appellant's business was conducted away from her home.

44. The costs relating to computer, telephone, clothing and stationery (where no private use adjustment has been made for either the landline or mobile phone costs) have again been allowed in their entirety.

45. Although no evidence has been provided by the Appellant to support her expenses claims for the years preceding the enquiry year, she states that she "used valid receipts and records.....". This clearly points to the fact that there were no material changes in the way in which she claimed expenses for those years. HMRC must then look at the extent of expenses claimed and whether they are considered reasonable in relation to her business turnover. HMRC's case is that there is evidence that the Appellant maintained the same system for claiming her expenses for years 2007-08 to 2010-11 as prevailed during 2011-12. In the absence of any evidence to the contrary, there must be a "presumption of continuity". The level of expenses claimed by the Appellant in her returns for those years appeared excessive,

ranging between 32%-100% of her business turnover. By using the presumption of continuity HMRC have recalculated the expenses to 20% of the Appellant's business turnover to reflect a more accurate expenses figure for each year.

46. Penalties are chargeable for making an incorrect income tax return. The legislation at Schedule 24 Finance Act 2007 explains in what circumstances a penalty is payable if inaccuracies in returns are discovered after the document has been submitted to HMRC.

47. A deliberate but not concealed penalty was initially charged, but it is evident that the Appellant submitted a return that she thought was accurate. Whilst there were clearly errors contained within the Appellant's expenses claim, HMRC accepts that she did not deliberately submit an inaccurate claim. The fact that she failed to comply with the legislation to keep proper records and has claimed some expenditure when the guidance notes would have led her to the conclusion that some of her expenses were not allowable does not necessarily demonstrate that this was deliberately done. Nonetheless, on the balance of probabilities her actions were careless.

48. It is for HMRC to show that incorrect returns were submitted negligently, and to show that the inaccuracies in the returns were a result of careless behaviour. If this is established the onus of proof reverts to the Appellant to show the quantum of the penalty is wrong. The statutory onus of proof is therefore on the Appellant (s 50(6) TMA 1970). HMRC assert that the Appellant has not discharged that onus.

49. Up to and including 2008, penalties were chargeable under s 95 TMA 1970. The maximum statutory penalty under s 95 TMA 1970 is 100% of the additional duties arising from the omissions and understatements. Section 100 TMA 1970 allows an authorised Officer of the Board in making a penalty determination to set it at such an amount as in his opinion is correct or appropriate.

50. HMRC have not charged a penalty in respect of 2007-08.

51. For 2008-09 and subsequent years penalties are chargeable under Schedule 24 Finance Act. Reductions are given for disclosure in respect of 'helping', 'telling' and 'giving'.

52. HMRC initially only allowed 10% each for 'telling', 'helping' and 'giving'. As the Appellant has never accepted that there are irregularities in her returns, the 10% reduction for 'telling' (max 30%) is in HMRC's view correct. With regard to the 'helping' reduction the Appellant has always insisted that her return was correct and from the outset has always responded to HMRC's enquiries, hence a reduction of 30% (max 40%). With regard to 'giving', the reduction for quality of disclosure has been set at 50%, given that the Appellant produced whatever information she had retained. The penalty for the enquiry year was therefore calculated as follows:

Penalty range for prompted disclosure	=	15% - 30%
Difference between min and max	=	15%
Multiply by total reduction	=	50%
Equals	=	7.5%
Deduct percentage reduction from 30%	=	22.5% (penalty percentage)

The penalty for 2011-12 is therefore £3,399.38 (Potential Lost Revenue) x 22.5% = £764.86.

53. The penalties for the earlier years (2008-09 – 2010-11) were calculated as follows:

2008-09	£3,234.58 (potential lost revenue) x 22.5% =	£727.78
2009-10	£5,587 09 (potential lost revenue) x 22.5% =	£1,257.09
2010-11	£1,573.72 (potential lost revenue) x 22.5% =	£354.08
		£2,338.94

- A total for 2007-08 to 2011-12 of £3,103.80.

54. The burden of proof in relation to the penalty assessment is with HMRC, who maintain that the Appellant was careless in not retaining proof of business expenditure. There is no evidence that she sought advice on what she could or could not claim, despite her being invited by HMRC to supply explanations.

55. HMRC may use its discretion to reduce a penalty under Schedule 24 because of special circumstances. HMRC will only consider the special reduction of a penalty where exceptional circumstances are identified. To be special the event must be something out of the ordinary, something uncommon. There are no special circumstances.

Conclusion

56. The onus is on the Appellant to show that she has been overcharged by the amendments to her 2011-12 self-assessment and the discovery assessments for years 2007-08 to 2010-11. In our view she has not discharged that burden. The Appellant failed to take reasonable care in not maintaining records and as a result submitted tax returns which cannot be verified. She has not provided any evidence to show that HMRC's assessments for the years under appeal are incorrect.

57. We do not agree that the copy statements of the Appellant's partner's Santander bank account "contain clear evidence of the Appellant's business expenditure". As Mr Stirk accepted, it is impossible for the Appellant to identify and prove that expenses which either the Appellant, or Mr Stirk incurred on her behalf, related to the Appellant's business. The Appellant has not attempted to reconstitute her records other than to provide a schedule of expenses in round figures which clearly indicate an element of guess work. No primary evidence has been produced.

58. The bulk of the Appellant's expense claim was made up of vehicle, fuel, travel and related costs. Clearly there must have been some element of private use. If an expense is incurred for more than one purpose, the relevant legislation (s 34(2) of the ITTIOA 2005) does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade. However, the Appellant has not provided any information which might allow for a dissection of the expenditure in order to determine whether any of it fell within ITTIOA 2005 s 34(2).

59. We do not accept the Appellant's assertion that HMRC have based their assessments on assumptions. The assessments are reasoned and clearly explained in HMRC's submissions.

60. The Appellant says that HMRC did not ask for evidence of expenditure incurred in respect of the years for which discovery assessments have been made. However, the burden of proof is on the Appellant. If she disputes the discovery assessments, it is for her to produce evidence to rebut the conclusions on which HMRC have based the assessments.

61. We agree with HMRC that the business expenses as claimed by the Appellant were inherently improbable in years 2010-11 and 2011-12 (100% of turnover) and appeared excessive in the earlier years (32% to 42.5%). The amendment of the Appellant's expenses to 20% of turnover appears fair and reasonable.

62. We find that:

i. The Appellant has not provided any evidence to displace HMRC's amendments to her 2011-12 self-assessment return;

ii. The discovery assessments were competent and the Appellant has not provided any evidence to displace HMRC's figures;

iii. The Appellant has carelessly submitted incorrect returns for the years in question.

63. The amendment to the Appellant's self-assessment for the 2011-12 tax year, and the discovery assessments raised in respect of the 2007-08 to 2010-11 tax years are accordingly confirmed.

64. We also concur with HMRC that the penalties imposed have been correctly calculated. The penalties are based on a reasoned methodology and in our view are correct. The Appellant has not discharged the onus upon her, to demonstrate that they are excessive or have been calculated incorrectly. They are therefore also confirmed.

65. The appeal is dismissed.

66. 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 CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 14 JUNE 2016