[2020] UKFTT 0021 (TC)

TC07527

INCOME TAX – assessments – best judgment - amendment of partnership returns to reflect undeclared income of partnership – alleged suppression of takings – appeal dismissed and amounts assessed confirmed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/01631, TC/2018/01634 & TC/2018/06589.

BETWEEN

GHULAM RUBANI T/A SHAMA BINGLEY **Appellant**

-and-

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

TRIBUNAL: JUDGE ABIGAIL HUDSON
DAVID MOORE

Sitting in public at Manchester Tax Tribunal on 30 and 31 October 2019

Gary Brothers and John Norman, Tax Advisors, for the Appellant

Alex Turnbull and Paul Eyles, litigators of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Mr Rubani and his partners, Mr Hussain and Mr Shabir, traded in partnership as Shama Bingley during the relevant periods. The business was (and remains, although now carried on by a limited company) a restaurant with premises at Clarke House, Keighley Road, Bingley, BD15 2RD. The restaurant had seating for around 66 customers during the relevant period and also offers a takeaway service. The present appeal concerns amendments to the partnership returns following a section 12AC Compliance check, resulting in a Code of Practice 9 Civil Investigation into cases of Serious Suspected Fraud ('COP9') investigation in relation to tax year 2012-13. It also concerns discovery amendments in relation to tax years 2011-12, 2013-14, 2014-15 and 2015-16.

2. The extent to which the amendments described above increase the partnership's taxable profits appears from the table below.

Year	Type	Profits shown on return £	Additional profits assessed £
2011-2012	Discovery amendment	63,294	55,908
2012-2013	Closure notice	40,809	145,672
2013-2014	Discovery amendment	58,295	153,202
2014-2015	Discovery amendment	94,928	105,961
2015-2016	Discovery amendment	152,730	40,591

3. Mr Rubani accepted that errors had occurred in recording sales of meals made in cash but contended that the level of under-declared cash sales was significantly less than the Respondent asserts. There has been a considerable amount of correspondence between Mr Rubani or his accountant and HMRC in an attempt to reach a settlement. On 2 January 2018 the Respondent issued amendments to the partnership and the Appellant appealed against those amendments. On 22 January 2018 the Respondents indicated that their view of the matter remained unchanged and VAT assessments were amended in accordance with those amendments.

4. The VAT assessments for the relevant periods comprise of an additional £147,499 of output tax for the periods 06/11 to 09/16.

5. In a notice dated 16 October 2018 penalties were issued for inaccuracies in VAT returns, relating to VAT periods 06/11 to 09/16. Those penalties amount to £77,436.92.

6. On the same date penalties were issued for inaccuracies in Income Tax Self-Assessment (ITSA) returns relating to the tax years ending 5 April 2012 to 5 April 2016 inclusive.

7. Mr Rubani – as nominated partner of the partnership - appealed to the Tribunal in a notice of appeal dated 22 October 2018**.** He appeals against the amendments, the VAT assessments and the penalties. Although not appealing directly against the personal penalties imposed upon each of the partners, inevitably the outcome of this matter will have an impact on those penalties.

8. At the appeal, Mr Rubani was represented by his tax advisor, Mr Brothers, and HMRC were represented by one of their officers, Mr Turnbull. In summary, HMRC submitted that the admitted failure to declare all cash sales showed that the business had under declared takings in the amounts in the table above. Mr Rubani accepted that errors had occurred in recording sales of meals during the relevant period and that his records were not perfect but he rejected HMRC's conclusions that takings had been underdeclared in the amounts assessed. He said that the 118 slips disclosed did not record accurate sales through the restaurant.

Evidence

9. We heard oral evidence from Ms Christine Marshall, the HMRC officer who conducted the enquiry. We also heard oral evidence from Mr Rubani and his current accountant Mr Azeem. In addition, the bundles contained a comprehensive collection of correspondence and other documentation generated by the enquiries which we have taken into account in this decision.

10. Ms Marshall said that the case was referred to her following a compliance check undertaken by Officer Cunningham. He opened the enquiry by issuing a notice under section 12AC Taxes Management Act 1970 to the partnership on 12 June 2014 in relation to the 2013 tax return. The tax return showed a net profit of £40,809. In November 2014, Ms Marshall was asked to review the partnership based on the information and documentation that Mr Cunningham had received. At that stage Ms Marshall had concerns about 118 slips that Officer Cunningham had concluded to be the true takings of the business. Those slips are handwritten and appear to cover seventeen non-consecutive weeks between 14 October 2012 and 23 March 2013. They appeared to Ms Marshall to include cash sales which did not then appear in the turnover declared. COP9 opening letters were issued to the three partners on 13 February 2015.

11. At some point upon receiving those letters the partnership engaged Grant Thornton UK LLP ('GT'). Signed and dated Outline Disclosures were returned by each partner dated 10 April 2015 admitting that a tax loss had been brought about through conduct that HMRC may consider to be deliberate. Cash takings were not properly recorded and the amount of cash sales had therefore been under-declared. The partners suggested that the deficiency was around £100,000 from June 2009. It is not clear what the basis for that figure was.

12. On 16 July 2015, Ms Marshall and a colleague visited the offices of GT. Mr Rubani, Mr Hussain and Mr Shabir and their then accountant Mr Azeem were present. No additional records were produced at the meeting. The meeting discussed the business and changes to the record keeping procedures. Ms Marshall produced the handwritten slips for the week ending 15 December 2012 and sought an explanation. None of the partners could offer an explanation although Mr Rubani said some of the handwriting could be his. At that time he stated that he had no recollection of writing them. It was noted by Ms Marshall that since being notified of the enquiry in June 2014 their declared net sales increased by over £10,000 in the next quarter, to the highest level ever declared. The partners indicated that to be the result of a new website. It was put to them that there was not a corresponding increase in purchases, and the partners asserted that to be due to less wastage.

13. On 1 March 2016 Ms Marshall collected the disclosure report prepared by GT who suggested that a ratio of 1/3rd cash to 2/3rd sales appeared reliable and suggested under declared sales of £160,000 over the last six years. That suggestion appeared to be largely based on a "Market and Sales Correlation Report" prepared by Mohammed Azeem and dated September 2015.

14. A further meeting was then held at GT on 12 December 2016 where Ms Marshall asked for consent to invigilation. GT declined invigilation in a letter dated 14 December 2016

indicating that the business model had changed significantly and offering a settlement of £315,347.

15. VAT assessments were issued for the relevant periods on 27 February 2017. On 31 May 2017 Ms Marshall issued a letter and schedules showing her calculation of the adjustments that were required to the direct tax declarations of the partnership. A further meeting followed attended now by the partnership's new agent – Independent Tax and Forensic Cervices Ltd ('IT'). Various discussions were had at the meeting and subsequently by letter during which the increased settlement offer was withdrawn and instead a settlement of £174,636 was offered.

16. Mr Rubani stated in evidence that he is the partner who deals with the paperwork and looks after the cash. As such he is the partner best placed to answer questions about the accounts. He detailed a restaurant with seating for up to 72 with a takeaway food service. He explained that the takeaway sales are not recorded separately from the sit-down service and estimated that takeaway sales accounted for about one third of sales. No explanation was provided for this estimate, given that there are no available records. He goes on to estimate that the understatement of profits since the business opened in 2009 may be around £100,000 but again offered no justification for this figure. He did not explain what cash takings had been declared versus what had not, or why. He asserts that the slips probably represent a "snapshot" of the contents of the till at any one time, but offers no explanation as to why such a record would be kept, or why the partners have concluded that that is what the slips represent. He asserts that the slips were a "control measure that was implemented on a temporary basis until changes in internal controls were put in place to improve our processes."

17. He put forward the report of Grant Thornton as a method of quantifying undeclared cash sales. That report uses the report of Mr Azeem for its conclusion. The report of Mr Azeem – entitled "Market and Sales Correlation Report" - contains a lot of general information regarding the UK economy. Both reports as they pertain to the Appellants are entirely predicated on the assertions made by the partners.

18. Mohammed Azeem gave evidence and told us that he is a Fellow of the Association of Certified Chartered Accountants. He has been accountant to Shama Bingley Ltd since September 2016. He is a personal friend of the partners. His report purports to consider the economic environment for businesses in the UK during the relevant period and specifically the restaurant business. It is not clear what experience or qualification he has to report on economic trends. He concludes that it would be impossible for the restaurant to achieve the turnover proposed by the Respondents.

The law

19. The amendments for 2011/12, 2013/14, 2014/15 and 2015/16 were made under Section 30B Taxes Management Act 1970. Section 30B(4) TMA 1970 prevents HMRC from making a discovery assessment unless one of two conditions is met. The first condition is that the omission or deficiency is attributable to fraudulent or negligent conduct of the representative partner or relevant partner or a person acting on behalf of such a partner. The second condition is that at the time when the enquiry window had closed, HMRC could not have been reasonably expected, on the basis of information made available before that time, to be aware of the omission or deficiency. It was not suggested on behalf of Mr Rubani that HMRC should have been aware of any omission or discrepancy in respect of those years before the enquiry window for each of those years had closed. Further, we consider that the admitted discrepancy in takings records for 2012/13 together with the admission that drawings were not recorded and the lack of complete records of sales for the period of enquiry establish on the balance of probabilities that the partnership was, at the very least, negligent in the completion of the partnership returns. Mr Brothers concedes that the conditions are met. The gross profits of the

business dropped by 76% in the year ending 31 March 2012 and therefore it is likely that the undeclared sales began in that tax year. The Respondent has allowed that the under declared sales may have begun at a lower level and gradually built up.

20. Having established a loss of tax, the legislation sets out two conditions without satisfaction of which the return shall not be amended. Section 30(B)(5) TMA 1970 states:

> The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by –
>
> a) The representative partner or a person acting on his behalf, or
>
> b) A relevant partner or a person acting on behalf of such a partner.

"In our view, a deliberate inaccuracy occurs when a taxpayer knowingly provides HMRC with a document that contains an error with the intention that HMRC should rely upon it as an accurate document. This is a subjective test. The question is not whether a reasonable taxpayer might have made the same error or even whether the taxpayer failed to take all reasonable steps to ensure that the return was accurate. It is a question of the knowledge and intention of the particular taxpayer at the time." (*Auxilium Project Management Ltd v HMRC* [2016] UKFTT 0249 (TC), para 63).

21. The burden is on the appellant to satisfy us that the amounts charged to tax by the amendments are wrong - see section 50(6) Taxes Management Act 1970 and *Brady v Group Lotus Car Companies plc* [1987] STC 635. The question for us therefore is whether we are satisfied on the evidence we have heard and seen that the additional amounts chargeable to tax as a result of the amendments are excessive. We answer that question and make our factual findings on the basis of the balance of probabilities.

22. The Appellant does not seek to dispute that the conditions for extended time limits for VAT assessments in section 77 (4) VATA 1994 have not been met. In this case there is a loss of VAT brought about as a result of a deliberate inaccuracy in a document given to HMRC. We find in those circumstances that the conditions have been met.

23. The Appellant does not seek to dispute that the conditions for extended time limits for amendments to ITSA returns in section 36 TMA 1970 have not been met. On any interpretation of the facts of this case it must be accepted that the loss of income tax in this case has been brought about by carelessness at minimum. We find in those circumstances that the conditions have been met.

24. In *Jonas v Bamford* 1973 51 TC 1, 1973 STC 519 Walton J observed, at page [25], that once the Inspector comes to the conclusion that, on the facts which he has discovered, the taxpayer 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. We further noted the decision of the Tribunal in *Dr I Syed v HMRC* [2011] UKFTT 315 (TC). We agree with the observations of the Tribunal in *Syed* at paragraph 38 that:

> "In our view this quotation [from *Jonas v Bamford*] 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 common-sense 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."

25. Penalties have been issued under Schedule 24 Finance Act 2007. The burden of proof rests with the Respondents to show that the inaccuracies occurred as a result of the Appellant's deliberate behaviour.

26. The penalties are calculated by reference to behaviours, these being: deliberate and concealed action (carrying a maximum penalty of 100% of the potential lost revenue), deliberate but not concealed (maximum penalty 70%) and careless (maximum penalty 30%).

27. Reductions to that penalty are prescribed in Schedule 24 for the Quality of Disclosure. These reductions are given under the categories of Telling (maximum 30% reduction), Helping (maximum 40% reduction) and Giving Access to Records (maximum 30% reduction).

Discussion

28. HMRC's submission was that, in the absence of evidence that shows that the under-declarations were one off events, the under-declarations in the year 2012/13 are evidence that under-declarations also occurred in other years. In fact it is conceded within the GT report that cash takings have been undeclared from 31 March 2010 to 31 March 2015 inclusive.

29. Mr Brothers, on behalf of Mr Rubani, accepted that the records for the years from the opening of the business in 2009 until the year ended 2016 were not accurate and that cash sales had not been properly recorded or declared during that period. The case before us centres on the 118 slips that were disclosed to Officer Cunningham upon initiating a compliance check. The case therefore turns on our findings of fact in relation to them. Mr Brothers concedes that if we conclude that those slips represent undeclared cash sales, then the assessments must stand. He concedes that in those circumstances the assessments are founded on fair inference and reasonable assumptions. If, on the other hand, we conclude that those slips are not records of cash sales, then the assessments have been made based upon unreasonable expectations of business performance and should be amended.

30. The 118 slips reflect activities from Sunday to Saturday for seventeen specific weeks between 14 October 2012 and 23 March 2013. They clearly record a VISA total at the bottom of the slip which corresponds with the Z printout included for the relevant day. That VISA total is then added to an amount of cash which is recorded in various denominations. The total on those slips does not correspond to the total takings for that day recorded on the weekly record sheet, which Mr Rubani told us was sent to the accountant in order to prepare the accounts and tax returns. In fact on every occasion, the amount recorded on the slip is significantly higher than the amount recorded on the weekly record sheet. The obvious inference from those slips is that they are a record of the cash sales, added to the VISA sales, making them the true record of daily takings. That is supported by the fact that if they do not record the daily cash takings, there does not appear to be any other record of the same. The weekly takings sheets record an amount in receipt that is greater than the VISA takings alone for that day, and therefore there must have been a record of cash taking in order to compile that sheet (unless the figures inserted are simply fabricated). Such cash records have not been provided. The partners indicated that they were destroyed after a few weeks, but it would be odd to retain other paperwork for the purposes of the accountant and not those cash records.

31. Mr Rubani's evidence before us was sadly unconvincing and confused. It is not clear what his case was because he struggled to articulate it, however, it appears to be that the cash recorded on those slips is simply an informal record of what cash was in the till at the end of

each day. When asked if that therefore did not equate to what cash had been taken within the restaurant, he said no, and appeared to be stating that each day he and his partners bring in cash from their own homes – unconnected with the business – put it in the till for use during the day, and then take it home again. We did not consider this explanation to be plausible. There would be no reason to bring unconnected money from home, when the business generated cash takings. There would further be a total inability to differentiate between which money belonged to which partner, and a total inability to account to the Respondent for what cash was being generated. In addition, it would make no sense whatsoever for such sums to be added to VISA sales at the end of each day and a total figure calculated. The only rational explanation in our view is that these slips do represent the actual sales of the business.

32. We are supported in that view by the various explanations proffered by the partners. Within the Outline Disclosure April 2015 no explanation is provided for the slips, but the partners stated that a £150 float is maintained and at the end of the days' trading the £150 is returned as float and the remaining cash recorded as takings on the weekly takings sheet. That does not appear to support later assertions regarding the slips being a "snapshot" of what cash was in the till at any one time. There would be no point in recording a "snapshot" if the cash takings were recorded at the end of each day as described in the outline disclosure.

33. In July 2015 at the meeting at GT, prior to Ms Marshall disclosing her possession of the slips, she asked them about their record keeping. It was confirmed in the presence of the partners that "the daily cash takings were calculated by taking the amount in the till less the opening float". That suggests that the money in the till at the end of the day (less the float) was in fact cash takings. The partners were then presented with one weeks-worth of slips. At that stage they would not have been aware that the Respondent was in possession of 118. All three partners stated that they did not know what the slips were or what they represented. They were afforded an opportunity to discuss it between themselves, and maintained that they had no knowledge of the slips. Mr Rubani conceded that it was his handwriting but maintained that he had no knowledge of the slips. We considered that while one may not recall writing one slip, these slips covered a six-month period and were apparently completed daily. We simply do not accept that Mr Rubani does not remember his reasons for filling out such sheets. Mr Rubani seems to now state that some of the slips are not in his handwriting. No expert evidence to demonstrate that has been put before us, but assuming that to be the case, he has accepted in his witness statement and in his evidence before us that he was the partner in charge of the business paperwork and that he would deal with the cash. If he did not specifically write those slips therefore it is likely that they were written at his direction. We do not accept that he has no knowledge of their compilation or purpose.

34. At the meeting dated December 2016 it was suggested that the slips might represent cash taken home and returned by the partners to pay wages. It was said that it could include additional amounts put in by the partners. Again, we can see no reason for operating such a system. If it includes additional cash put in by the partners that would surely be recorded so that the partner got his cash returned. If it were simply cash taken home, where has that cash come from, because it is substantially more each day than has been declared in takings.

35. In his witness statement Mr Rubani stated that the slips were a "control measure that was implemented on a temporary basis until changes in internal controls were put in place to improve our processes." If that is correct such slips must exist for the intervening weeks, yet they have not been provided. Mr Rubani was the partner in charge of such matters and must recall a control measure presumably instigated by him and continued for over six months, yet he denies all knowledge. The HMRC investigation commenced in mid 2014. If the slips were intended as a control measure until changes could be made, no evidence has been offered of

any changes having been made or any reason to bring that "control measure" to an end. We do not accept this explanation.

36. In evidence before us Mr Rubani said that the partners would come in with cash every day and rather than keeping it in their pockets they would put it in the till for safe keeping. They would then each take that cash home each day. There are no records of what they put in and took out. They each kept their own personal records at home and did not gave that to the accountant. We found this explanation to be absurd. There could be no possible reason to "store" personal cash in the business till during the day. We found it very difficult to get a direct answer to any question from Mr Rubani and considered his evidence to be disingenuous and untruthful.

37. The GT report is not particularly helpful, it being entirely a record of what has been reported to them by the partners. The financial statements prepared by Firth Parish Accountants for the year to 31 March 2013 show a Gross Profit Rate of 72.9%. The figures suggested by the Respondent would increase the GPR to 86.2%. The report opines that this is not possible given the size and nature of the premises and cites HMRC's Tactical and Information Package regarding Restaurants and Takeaways which apparently says that generally HMRC would expect to see a GPR in the region of 60-65%. Given that the recorded GPR is 72.9% and the Appellant accepts that in fact that is based on undeclared sales, and therefore the accurate GPR is even higher than that, we do not consider that speculation regarding the average GPR in the restaurant trade is particularly helpful. This restaurant is evidently generating a significantly higher GPR than other similar establishments. Indeed the GT report goes on to say that computing takings on the expected GPR percentages would be unhelpful given purchases have not been recorded properly throughout.

38. Much of the report is predicated on the assertion by the partners – supported by the Report prepared by Mr Azeem – that the takings would comprise one third cash and two thirds visa. The proposed settlement is based on that conclusion. We found the evidence of Mr Azeem unimpressive. His report contains fundamental glaring omissions suggesting that it is in no way objectively compiled. We note that he is a personal friend of the partners. He bases his estimate of the volume of takeaway orders on the number of takeaway orders made by the general public per week, without any consideration of whether this is a busy takeaway or not. He criticises a turnover which he says is based on an individual meal being produced every 95 seconds, without any consideration of bulk preparation. He uses a 2.5 mile radius for the customer catchment area, but that is plainly not supported by the wealth of Trip Advisor reviews provided to us. He then uses that to extrapolate the available cash to spend at the restaurant. It seems to us that the methodology is unrealistic and flawed. He goes on to assert that the only undeclared monies are those which may have been stolen from the cash drawer by untrustworthy staff. Given there are no records of cash takings, it is entirely impossible to reach such a conclusion based on the evidence. Given an offer of over £150,000 is accepted as settlement by the Appellant that would equate to around £30,000 of small un-noticed thefts from the till per year. Such a suggestion is grossly implausible. The pivotal finding in this report which has then persisted through the GT report is this assertion that the business would receive takings on a one third cash, two thirds VISA basis. This conclusion appears in the report: "The expected card to cash ratio for a business with similar trade is around 2/3rd and 1/3rd respectively". He offers no basis for this assertion and no evidence to support it. We found the report of Mr Azeem to be unrealistic and misleading. Since the GT report is based upon Mr Azeem's assertions we do not consider the ratio proposed to be an appropriate method of assessing undeclared takings.

39. Mr Rubani rightly makes the point that the slips were disclosed by the partnership via their accountant at the time – Firth Parish. We accept that if the partnership were trying to hide

sales then it would be foolish to produce those slips. However, this is a case in which it is not disputed that the partnership was not declaring the full extent of its sales. It is in our judgment inconceivable that a business would go to the trouble of recording cash sales, but then fail to accurately record them in the weekly takings sheet, unless that failure was deliberate. Notably, the slips are only available in relation to 17 weeks over a six-month period. Those slips were, for whatever reason, retained by the partnership. Having saved the slips from 17 non-consecutive weeks, it is extremely likely that slips from other weeks were also retained. There must therefore be a number of slips that have not been disclosed. Those must be in the possession of the partnership or their former accountant and have yet not been produced or explained. In those circumstances we conclude that the slips were unintentionally disclosed. In our judgment, the partnership have been deliberately under-declaring sales since 2009.

40. Mr Brothers makes the point that after the investigation concluded Ms Marshall accepts that she was happy that the record keeping was now more effective. We interpreted her evidence to be that she was happy that the records were now being kept more thoroughly, but she obviously cannot know whether any takings are not being recorded. In terms of sales fluctuations it is notable that after the opening of the enquiry there was an increase in declared takings. Similarly there were increases after the COP9 opening letter was issued and again after the opening meeting in July 2015. A number of explanations have been proffered for this such as a decrease in wastage, increased marketing through the website, seasonal and environmental fluctuations etc. Given our findings in relation to the credibility of the explanations offered in relation to the slips, we find the fluctuations in takings to support HMRC's case.

41. We have had consideration of the report of GT but as Mr Rubani accepts it is based on assertions made by the partners. The credibility of their evidence is therefore very much central to how much weight can be put on the conclusions of the report. For example "unidentified deposits" are only relevant if one accepts that all monies have been funnelled through the disclosed bank accounts. However, Mr Rubani concludes that those unidentified deposits in his account are in fact not related to undeclared profits, and therefore there is no money trail to follow. Given that he agrees that a substantial amount of money has not been declared that does not assist us in identifying where that money – however much it may be – has gone.

42. We accept that Ms Marshall was unable to identify where the undeclared monies were going in this case. It is accepted by the Appellant that over £150,000 may have been underdeclared and yet that money has not been traced. She said during her evidence that it may have gone on untaxed wages, but she was speculating. She obviously cannot know where that money had gone, beyond that it was not in assets registered in the partners names. Given the monies in this case are cash, it would be unsurprising that there was not a paper trail to follow. She clearly gave consideration to this issue, but concluded that it did not change her view that the business had under-declared the cash sales recorded on the slips. Having considered the absence of any obvious assets, we agree that that absence does not detract from our conclusion that those slips record undeclared sales.

43. Turning then to the issue of whether the under-declaration of takings is deliberate, we note that upon signing Outline Disclosures on 10 April 2015 all three partners acknowledged that there was a tax loss. If the slips were not a record of undeclared cash sales then there must have been other evidence of undeclared cash sales for the partners to have concluded that there were in fact undeclared sales. All three partners immediately acknowledged failing to properly account for cash sales. This was a business that had been in operation almost six years at that stage. All three partners must have been aware that the tax liabilities for the business could not be properly assessed without accurate accounts and yet plainly – on their account - no such accurate accounts were kept. We do not accept that any reasonable business person could be

unaware that no accurate records of cash sales were being kept, and the immediate concession suggests that the discovery of underdeclared cash sales did not come as a surprise to the partners. The partners in fact agree that they did not submit accurate figures in relation to the cash takings. That is deliberate behaviour and the condition set out in section 30(B)(5) of the Taxes Management Act 1970 is satisfied.

44. As a matter of fact we do conclude that the slips represent undeclared cash sales and we consider that the evidence of Mr Rubani is therefore untruthful. The fact that none of those monies have been recorded on the weekly taking sheets which have then been sent to the accountant suggests that the information has been withheld deliberately.

45. It follows that we are satisfied that the Respondent's decision to charge penalties for inaccuracies in VAT returns and ITSA returns have been issued correctly. For the reasons given above we are satisfied that the inaccuracies were deliberate. The starting point for penalties is therefore 70% of the potential lost revenue.

46. Mr Brothers does not seek to argue that the reductions thereafter should have been greater, and in particular does not seek to argue special circumstances, however, we are satisfied that the reductions have been properly applied. A reduction of 10% has been applied for "Telling". Throughout, no proper explanation has been provided for the slips, and we have concluded that any explanation offered has been untruthful. A reduction of 10% has been applied for "Helping". The Appellants have continued to deny that the slips demonstrate the true case takings and have offered repeatedly unrealistic estimates of omitted sales. A reduction of 30% has been applied for "Giving Access to Records". The Respondents have accepted that all sought documentation has been provided as requested. We do not go behind this conclusion but consider it to be generous, given the likelihood that further records of true cash takings do exist but have not been provided.

Decision

47. In conclusion, Mr Rubani has not produced evidence to satisfy us that the additional amounts chargeable to tax as a result of the amendments are excessive. On the evidence that we have seen, we are satisfied on the balance of probabilities that the takings of the partnership's business were understated for the tax years in question. We consider that the amounts as amended for the years under appeal are reasonable. Accordingly, we confirm the amendments and dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

48. 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.

ABIGAIL HUDSON
TRIBUNAL JUDGE

Release date: 13 January 2020