Neutral Citation: [2023] UKFTT 620 (TC)

Case Number: TC08861

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal reference: TC/2019/03968

INCOME TAX – whether appellant was trading online – failure to declare income from self-employment – failure to notify chargeability – discovery assessments – penalties – appeal dismissed

Location: Decided on the papers
Judgment date: 12 July 2023

Decided by:

TRIBUNAL JUDGE JONATHAN CANNAN

Between

VITALIE MILASENCO

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the appeal on 7 July 2023 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 4 June 2019 (with enclosures), HMRC's Statement of Case dated 12 January 2020, a hearing bundle including a witness statement of Officer Ian Cragg dated 30 July 2021 with exhibits and the Appellant's response to that witness statement dated 24 May 2023.

DECISION

INTRODUCTION

1. In January 2023, the appellant (" Mr Milasenco") invited the Tribunal to deal with this appeal on paper based on the information and documents already provided to the Tribunal. He made this request because of his medical condition, which meant he felt unable to attend a hearing in person or remotely. At this stage, Mr Milasenco had not responded to a witness statement of Officer Ian Cragg dated 30 July 2021 setting out HMRC's case. The Tribunal gave Mr Milasenco an opportunity to respond to that witness statement and he did so on 24 May 2023.

2. The appeal concerns a closure notice and discovery assessments for tax years 2013-14 to 2016-17 ("the Assessments"). It also concerns inaccuracy penalties for 2013-14 to 2015-16 and a failure to notify penalty for 2016-17 ("the Penalties").

3. HMRC made the Assessments on the basis that Mr Milasenco had self-employment income from online trading in goods during the relevant tax years. The tax assessed by the Assessments totals £19,067. HMRC also contend that Mr Milasenco deliberately delivered inaccurate self-assessment returns in 2013-14 to 2015-16 and deliberately failed to notify his liability to income tax for 2016-17. The Penalties total £9,341.

4. In relation to the Assessments, there is a burden on HMRC to establish that the conditions for discovery assessments were satisfied. Otherwise, the burden is on Mr Milasenco to establish that the assessments are excessive. He contends that he had no income from online trading during the relevant tax years and that he is being harassed by HMRC. He had an eBay account and a PayPal account which were hacked, resulting in many unauthorised transactions. Other transactions were personal transactions and not trading.

5. In relation to the Penalties, the burden is on HMRC to establish that Mr Milasenco deliberately delivered inaccurate self-assessment returns, and in 2016-17 deliberately failed to notify his liability to income tax.

FINDINGS

6. I make the following findings of fact on the balance of probabilities based on the witness statement of Officer Cragg and the material provided by Mr Milasenco.

7. In 2014, HMRC enquired into what appeared to be online trading by Mr Milasenco via an eBay account. Following the conclusion of that enquiry in January 2015, he was assessed to income tax for tax years 2009-10 to 2012-13 in relation to his trading activity. There was no appeal against those assessments.

8. Mr Milasenco was then registered for self-assessment with effect from tax year 2013-14 and required to submit tax returns. His returns for 2013-14 to 2015-16 declared income from employment as a security officer but no income from self-employment. In 2013-14 his gross employment income was £13,731. In relation to tax year 2016-17, Mr Milasenco informed HMRC that he had no income from self-employment and as a result he was not required to submit a self-assessment return.

9. HMRC opened an enquiry into Mr Milasenco' tax return for 2014-15 on 6 January 2017.

10. I am satisfied from the evidence adduced by Officer Cragg that the following facts and matters have been established and I find as follows:

> (1) Mr Milasenco had traded on eBay since at least 2008 under the seller name *geminis73*. It was this trading which led to the assessments for 2009-10 to 2012-13.

(2) In 2016, the seller *geminis73* had items for sale on eBay ranging from electronic recording tapes to smartphones. There were 793 feedback entries for the previous 12 months.

(3) In 2014-15, Mr Milasenco's Barclays bank account had many transactions to mobile phone suppliers. There were also many payments to delivery companies such as the Post Office and Parcel Monkey.

(4) In 2014-15 there were multiple deposits from Amazon totalling £7,814 into Mr Milasenco's Barclays bank account.

(5) In September 2014, Mr Milasenco created a new online store on eBay under the name *gemini-73-UK*. The items being sold included Apple iPods and cassette tapes. There were hundreds of ratings for the store.

(6) Mr Milasenco also joined a wholesale trading platform called Cellpex in June 2015 with the username *gemini73*. The website showed hundreds of positive feedback entries for gemini73 as a seller, although these appear to be in respect of his eBay account.

(7) Mr Milasenco operated a PayPal account. A transaction listing for the period 1 June 2014 to 26 August 2014 showed numerous payments received from different individuals with associated administrative fees indicative of trading.

(8) Mr Milasenco's Barclays bank account for 2014-15 showed deposits of £125,234 via PayPal, and amounts transferred to others via PayPal of £48,164.

11. Mr Milasenco has given no explanation for these matters other than to say that the transactions were unauthorised and his eBay and PayPal accounts had been hacked many times. Further, many of the PayPal transactions were personal transactions and not trading. There is no explanation for the transactions on his Barclays account. The explanations given by Mr Milasenco are not credible given the volume of transactions, the period over which they are recorded and the transfers involving his Barclays account.

12. Overall, I am satisfied that Mr Milasenco was trading in goods online in each of the tax years from 2013-14 to 2016-17.

13. Officer Cragg issued a closure notice on 3 December 2018 charging additional tax and national insurance of £5,184. On the same date he issued discovery assessments for tax years 2013-14, 2015-16 and 2016-17. The additional tax and national insurance charged by the Assessments is as follows:

Tax Year	**Form of Assessment**	**Amount £**
2013-14	Discovery Assessment	3,928
2014-15	Closure Notice	5,184
2015-16	Discovery Assessment	4,776
2016-17	Discovery Assessment	5,176

14. I am satisfied that Officer Cragg had discovered that Mr Milasenco's self-assessments for tax years 2013-14 and 2015-16 were insufficient and that in 2016-17 an amount of income tax which ought to have been assessed had not been assessed. As such, section 29(1) Taxes Management Act 1970 (discovery assessments) was engaged.

15. I am also satisfied and find as a fact that in relation to each of those tax years the insufficiency was brought about deliberately by Mr Milasenco. There is no other credible explanation for Mr Milasenco's failure to declare his income from self-employment. HMRC have satisfied me that the conditions for making the discovery assessments were met in relation to each tax year in which a discovery assessment was made.

16. In order to estimate Mr Milasenco's profits from self-employment, Officer Cragg considered using the evidence of turnover and expenses from 2014-15 identified above. However, in favour of Mr Milasenco he used figures from the previous enquiry for tax years 2009-10 to 2012-13. This gave a net profit from trading of £20,346 per year. He assumed that the previous trade had continued at the same level. I am satisfied that was a reasonable approach. If anything, it was generous to Mr Milasenco. The Assessments were justified and not excessive.

17. Officer Cragg notified the Penalties to Mr Milasenco as follows:

Tax Year	**Form of Penalty**	**Amount £**
2013-14	Inaccuracy Penalty	1,925
2014-15	Inaccuracy Penalty	2,540
2015-16	Inaccuracy Penalty	2,340
2016-17	Failure to Notify Penalty	2,536

18. The inaccuracy penalties were notified pursuant to Schedule 24 Finance Act 2007. The failure to notify penalty was notified pursuant to Schedule 41 Finance Act 2008.

19. Schedule 24 provides for a penalty to be payable where a person delivers an inaccurate self-assessment return. Schedule 41 provides for a penalty to be payable where a person fails to notify chargeability to income tax. In each case, where the behaviour is deliberate but no steps have been taken to conceal the inaccuracy, the maximum penalty is 70% of the potential lost revenue. The penalty can be reduced where the taxpayer discloses the matter by telling HMRC about it, giving reasonable help to quantify the inaccuracy and allowing HMRC access to records in order to quantify the inaccuracy. There is however a minimum penalty of 35% of the potential lost revenue where the disclosure was prompted by HMRC.

20. I am satisfied that for each tax year the failure on the part of Mr Milasenco was deliberate, but that he took no steps to conceal the failure. The maximum penalty is therefore 70% of the potential lost revenue. In this case, the potential lost revenue is the tax assessed.

21. Officer Cragg gave Mr Milasenco a 60% reduction for disclosure in calculating the Penalties to reflect the assistance he had given during the enquiry. I am satisfied that the reduction given was reasonable, albeit again bordering on the generous. I am therefore satisfied that the Penalties were lawfully imposed and there is no basis on which I should reduce the Penalties.

22. There is also provision for penalties to be reduced by HMRC in special circumstances. There are only limited grounds on which I can interfere with HMRC's decision in relation to special circumstances. I am satisfied that there are no special circumstances to justify a reduction in this case. Mr Milasenco has referred in his submissions to the Tribunal to his medical condition and also to the fact that he is on the verge of bankruptcy. I do not consider that these matters would justify any special reduction in the Penalties.

CONCLUSION

23. For all the reasons given above I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

24. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

Release date: 12th JULY 2023