



Neutral Citation: [2023] UKFTT 704 (TC)

Case Number: TC 08895

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/11386

*INCOME TAX – penalties for inaccuracies in returns to obtain tax repayments – returns submitted by an agent with unsubstantiated expenses – Schedule 24 to Finance Act 2007 – whether inaccuracies ‘careless’ as failure to take reasonable care – whether special reductions – appeal dismissed*

**Heard on:** 23 March 2023

**Judgment date:** 3 August 2023

**Before**

**TRIBUNAL JUDGE HEIDI POON  
MEMBER SUSAN STOTT**

**Between**

**SUNIL JOSEPH**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS  
Respondents**

**Representation:**

For the Appellant: Mr Sunil Joseph in person

For the Respondents: Ms Misbah Khan, Litigator of HM Revenue and Customs’ Solicitor’s Office

## DECISION

### Introduction

1. Mr Sunil Joseph ('the appellant') appealed against the penalties imposed by the respondents ('HMRC') under Schedule 24 of the Finance Act 2007 ('Sch 24') for inaccuracies in the Self- Assessment ('SA') returns, which resulted in tax repayments being made to the appellant in relation to five tax years 2013-14 to 2017-18.
2. HMRC have raised discovery assessments to recover the income tax repayments made due to errors in the SA returns, which were submitted on the appellant's behalf by an agent. The discovery assessments are not under appeal, and tax liabilities and interest related thereto are being settled by way of a payment plan.
3. The penalties imposed for inaccuracies in the SA returns are pursuant to Schedule 24 to the Finance Act 2007, and are the subject matter under appeal. The quantum of penalties under appeal is £3,412.56.

### Summary Decision

4. On 15 May 2023, the Tribunal released a Summary Decision dismissing Mr Joseph's appeal, with leave for the party wishing to appeal against the Summary Decision to apply within 28 days for full written findings and reasons (a 'Full Decision'). By email dated 8 June 2023, Mr Joseph applied for a Full Decision, and this is the Full Decision.

### Evidence

5. The Tribunal has been provided with a core hearing bundle of 369 pages, of which 136 pages relate to legislation and case law.
6. HMRC called Officer Smita Ahya as the decision maker for raising the discovery assessments and the related penalties. We find Officer Ahya to be credible and reliable, and accept her evidence as to matters of fact.
7. Mr Joseph gave evidence to the Tribunal, and we have no issue with his credibility, and accept his evidence as to matters of fact.

### Relevant legislation

8. The penalties under appeal are imposed under Sch 24 to FA 2007, of which the material paragraphs for the purposes of this appeal are as follows.

- (1) Paragraph 1 of Sch 24 concerns 'Error in taxpayer's document' and is the relevant provision under which the penalty assessment is raised.

#### *Error in taxpayer's document*

**1(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) Conditions 1 and 2 are satisfied.

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

- (a) an understatement of a liability to tax,
- (b) a false or inflated statement of a loss, or
- (c) a false or inflated claim to repayment of tax.

**1(3)** Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.

**1(4)** Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

(2) Paragraph 2 concerns the failure to notify HMRC of an under-assessment and does not apply to this appeal.

(3) Paragraph 3 defines the degrees of culpability, and the relevant descriptions for this appeal are as follows:

***Degrees of culpability***

**3(1)** For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is –

- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
- (b) “deliberate but not concealed” if the inaccuracy is deliberate on P’s part but P does not make arrangements to conceal it, [...].

(4) Paragraph 4 provides for the standard amount of penalty imposable as a percentage of the potential lost revenue (‘PLR’): (a) 30% of PLR for careless action; (b) 70% of PLR for deliberate and not concealed action; and (c) 100% for deliberate and concealed action.

(5) Paragraph 5 defines PLR as the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

(6) Paragraph 7 provides for the determination of PLR where losses are concerned. Sub-paragraph 7(1) states:

Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is calculated in accordance with paragraph 5.

(7) Paragraph 11 provides for special reduction whereby HMRC may reduce a penalty under para 1,1A or 2 if they think it right because of special circumstances.

(8) Paragraph 17 provides for the Tribunal’s jurisdiction, on an appeal against a decision of HMRC that a Sch 24 penalty is payable, whereby the tribunal ‘may affirm or cancel HMRC’s decision’ or ‘substitute for HMRC’s decision another decision that HMRC had power to make’.

(9) If the tribunal substitutes its decision for HMRC’s, it may rely on para 11: (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or (b) to a different extent, but only if the tribunal thinks that HMRC’s decision in respect of the application of paragraph 11 was flawed.

(10) Paragraph 18 (under Part 4 for Miscellaneous) provides for the extent P is to be assessed for culpability where agency is involved. The relevant sub-paras are:

**AGENCY**

**18(1)** P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P’s behalf.

**18(2)** In paragraph 2(1)(b) and 2(a) a reference to P includes a reference to a person who acts on P’s behalf in relation to tax.

**18(3)** Despite sub-paragraphs (1) and (2), P is not liable to a penalty under paragraph 1 or 2 in respect of anything done or omitted by P’s agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2) [...].

## **Findings of fact**

9. In evidence, Mr Joseph stated that he has worked as a social worker for some 13 years, and initially to provide out-of-hour assistance to people with autism or similar needs working for 'different departments'. In 2013-14, he moved to work with Alcohol Services with a salary increase, and for a single employer, Croydon Social Services. As an employee, he has been under Pay As You Earn ('PAYE') whereby his employer would deduct income tax and NIC payable by Mr Joseph at source.

10. Mr Joseph also stated that he learned about his 'entitlement' to expense claim through emails from the trade union. He followed the advice of a friend working in similar capacity in Birmingham, and to check his eligibility, Mr Joseph approached an agent who claimed to have previously worked for HMRC. Mr Joseph said that he did not carry out any background due diligence checks on the agent's credentials, and simply 'took his word for it'.

11. The agent submitted Self-Assessment returns on behalf of Mr Joseph that resulted in significant sums of tax repayments. Mr Joseph was cross-examined on what information he gave to his agent for preparing his returns for submission, given that there had been various expense claims; he repeated that the agent only asked for his P60s, and stated in evidence that: 'Unfortunately, he [i.e. the agent] only wanted P60s.'

12. The inaccurate SA returns submitted for the appellant are as follows.

- (1) On 2 January 2018, the returns for the three years 2014-15, 2015-16, and 2016-17;
- (2) On 3 January 2018, the return for the tax year 2013-14 (the fourth return in a row);
- (3) The appellant claimed to have been self-employed for the four consecutive years 2013-14 to 2016-17, and that in each of these tax years, a trading loss was incurred, and the losses had been set off sideways against his employment income.
- (4) On 17 May 2018, the return for 2017-18 was submitted.
- (5) Travel and subsistence expenses and professional fees were claimed on all returns.

13. The tax repayment claims for the five tax years represent the Potential Loss Revenue ('PLR') and total £22,750.40:

- (a) Year to 5 April 2014 in the sum of £1,848.80;
- (b) Year to 5 April 2015 in the sum of £5,496.80;
- (c) Year to 5 April 2016 in the sum of £5,443.80;
- (d) Year to 5 April 2017 in the sum of £4,966.80;
- (e) Year to 5 April 2018 in the sum of £4,994.20.

14. The agent took 10% of the tax repayments received for submitting the SA returns for the five years in question.

### ***Careless behaviour and prompted disclosure***

15. The penalty explanation letter set out the considerations taken into account by Officer Ahya in arriving at the categorisation of behaviour leading to the inaccuracies in returns.

- (1) The explanation of claiming expenses not entitled to be claimed on reliance of an agent was taken into account.
- (2) It remains the taxpayer's responsibility to check what was submitted on his behalf; but no question was asked by Mr Joseph that the outcome should be such substantial repayments.

- (3) The behaviour was considered to be careless, because Mr Joseph did not take reasonable care with the returns submitted on his behalf.
- (4) No suspension of penalty because conditions cannot be set for future returns since Mr Joseph should not have submitted any returns in the first place.
- (5) Further, there was no underlying failure or weakness in record keeping for suspension condition to be set.
- (6) The disclosure was prompted because Mr Joseph did not tell HMRC about the inaccuracies before HMRC had reason to believe that they would be discovered.

### ***Penalty percentage***

16. The penalty range for careless inaccuracies and prompted disclosure is statutorily provided to be from 15% at the lowest to 30% at the highest. Within this range, Mr Joseph was given the maximum reduction for: (a) Telling at 30% – by admitting to making mistakes; (b) Helping at 40% – by co-operating with the enquiry; (c) Giving at 30% – by giving access to records (although here is a case where there are no relevant records to be accessed since there was no self-employment, and no relevant expenses incurred eligible for deduction).

17. The maximum percentage of reduction was applied to the difference in the penalty range of 15%, reducing the penalty percentage from 30% to 15%. The penalty percentage of 15% applied to the PLR of £22,750.40 gives the overall quantum of penalties under appeal of £3,412.56. The View of the Matter letter was dated 22 July 2020 by Officer Ahya, and the penalty assessment was issued by letter dated 29 July 2020.

### ***Appeal to HMRC and Review Conclusion***

18. Mr Joseph appealed to HMRC against the penalties by letter dated 26 November 2020, when the due date for making the appeal was 28 August 2020. Nevertheless, Mr Joseph's late appeal was accepted by HMRC, and the Review Conclusion was issued on 7 October 2021.

19. The review conclusion letter of 7 pages long covers the background to the claims in some detail. The key considerations in the review conclusion are summarised as follows:

- (1) Mr Joseph is responsible for ensuring that all returns or other documents submitted to HMRC are correct and accurate, regardless of whether a third party was appointed to act on his behalf.
- (2) While Mr Joseph may not be an expert in taxation and may not have known exactly what figures he expected to see on his returns, he would have noticed the incorrect claim for self-employment losses and may have queried the large travel and subsistence claims with either the agent or HMRC.
- (3) The review conclusion considered special circumstances whether to reduce the penalty further for different reasons, and the review officer concluded that there is no evidence of any special circumstances, having taken into account all relevant factors.

### ***Grounds of appeal***

20. From the stated grounds on the Notice of Appeal, Mr Joseph's contentions are:

- (1) He has limited knowledge of the tax system in the UK and therefore he appointed an agent to act on his behalf. He had no reason to think that his agent was misleading him and therefore did not inform HMRC of the inaccuracies as he did not know about them.
- (2) He had answered all questions and provided everything he could to the caseworker once he found out about the inaccuracies. He has always responded to HMRC's correspondence quickly and actively helped to resolve the matter.

(3) He feels HMRC have discriminated him and have been inconsistent in their approach compared with other cases.

(4) He has been struggling financially due to the pandemic and has been under stress.

(5) He has made every effort to pay off the assessed tax and has a time to pay arrangement of £500 per month in place.

21. In submission, Mr Joseph elaborated on his main grounds of appeal as follows:

(1) That he trusted the agent's 'credentials' because he said he used to work for HMRC; that 'tax is not [his] area of expertise'; that he would not have offered 10% of his repayments if he had not trusted the credentials of the agent; that HMRC could make mistakes as seen by the many changes in terms of his tax code over the years.

(2) That his colleagues in similar circumstances have 'all been exempt from penalties'; that his colleagues had used the same agent and consented to similar tax repayments that were made in error, and co-operated with HMRC.

## **Discussion**

### ***Overall quantum of the penalties***

22. In terms of the overall quantum of the penalties, Mr Joseph does not dispute that the amount of discovery assessment for each of the five years in question as set out at §13 above is the sum of the tax repayments that had been erroneously claimed. To that end, the Potential Lost Revenue ('PLR') to which the penalty percentage is applied has been correctly determined.

23. As to the penalty percentage set at 15%, we note that the maximum reduction has been given to bring the penalty percentage to the minimum provided by the statute for careless inaccuracies and prompted disclosure.

24. For a penalty occasioned by a careless inaccuracy to be suspended, the taxpayer needs to be under a statutory obligation to make future returns for suspensive conditions to be set. Mr Joseph is not a taxpayer for whom a Self-Assessment return is required to be completed for any suspensive conditions to be set in relation to any future obligations. We agree therefore that conditions cannot be set in this case for suspension of the penalties to be in point.

25. Mr Joseph does not dispute that the disclosure was prompted.

### ***Whether failure to take reasonable care***

26. For the appeal to succeed, the Tribunal has to be satisfied that the behaviour that led to the inaccuracies in the submitted returns was not careless on the part of Mr Joseph; that is to say, Mr Joseph had taken 'reasonable care' in relation to the claims made in his returns. In this respect, the Tribunal adopts the test as described in *Anderson (deceased) v Revenue and Customs Comrs* [2009] UKFTT 206 ('*Anderson*') by Judge Berner at [22]:

'The test to be applied, in my view, is to consider what a reasonable taxpayer, exercising reasonable diligence in the completion and submission of the return, would have done.'

27. In *Hanson v HMRC* [2012] UKFTT 314 (TC) ('*Hanson*'), Judge Cannan considered 'carelessness' for Sch 24 penalty purposes and concluded at [21]:

'What is reasonable care in any particular case will depend on all the circumstances. In my view this will include the nature of the matters being dealt with in the return, the identity and experience of the agent, the experience of the taxpayer and the nature of the professional relationship between the taxpayer and the agent.'

28. In considering whether Mr Joseph had taken reasonable care in allowing inaccurate tax returns to be submitted on his behalf, we have regard to the following facts:

(1) A reasonable taxpayer in engaging an agent would have ascertained the credibility and reliability of the agent, for example, whether the agent is regulated by a professional body such as the Chartered Institute of Accountants in England and Wales (ICAEW). Mr Joseph admitted not to have carried out any checks on the agent's credentials.

(2) A reasonable taxpayer would have checked what had been included in the returns submitted on his behalf. In the present case, expense claims were made which were not substantiated by any receipts provided by Mr Joseph. For a tax repayment of around £5,500 to be generated, the overall amount of expenses claimed would be five times that of the tax repayment, i.e. £27,500. A reasonable taxpayer would have asked whether the claim of £27,500 of expenses had any factual basis, but Mr Joseph did not enquire the basis of the expense claim year on year.

(3) Mr Joseph himself admitted that the agent did not ask for any documents from him whatsoever to prepare for the returns, other than the P60s. The Tribunal is unclear what Mr Joseph could have intended by using the adverb 'Unfortunately' to qualify the fact that the agent did not ask for any documents other than his P60s. On one interpretation, it would suggest that even Mr Joseph considered it amiss that his P60s were all that was requested by the agent to generate the tax repayments.

(4) It is unclear to us what other documents Mr Joseph could have provided to substantiate a claim of expenses to the tune of £27,500 a year. No receipts of expenses had ever been produced by Mr Joseph, and if he had taken reasonable care in checking the returns submitted for him, he would have known that the expenses claimed in the returns were without any factual basis whatsoever, and were wrong in fact.

(5) It is well within Mr Joseph's ability to check that he did not incur expenses to the tune of £27,500 a year to merit the tax repayments. The reasonable care that is required to check the accuracy of the returns in the present case is at a basic and factual level and does not require 'expertise', or specialist knowledge in tax.

(6) A taxpayer cannot rely on an agent as a ploy to abnegate his personal responsibility in checking the returns that are submitted on his behalf are accurate. Paragraph 18 of Schedule 24 is the express provision to that effect.

(7) Mr Joseph is employed by a highly regulated sector as a social worker, and would be aware of the rules he has to comply with in the course of discharging his duty. We are of the view that Mr Joseph has the subjective attribute to exercise due diligence and reasonable care required in checking the basis of the expenses claimed to avoid the inaccuracies in the submitted returns if he had due regard for his obligations as a taxpayer to ensure the accuracy and correctness of information contained in his returns submitted.

29. As to the alternative ground of appeal that HMRC have granted exemption from penalty to other taxpayers in similar situations to Mr Joseph, this is the nature of an assertion and no finding of fact can be based thereon. Not only is this assertion without factual basis, the Tribunal has no general judicial review jurisdiction to consider this ground of appeal. The Tribunal's lack of jurisdiction to consider this ground of appeal was explained to Mr Joseph at the hearing. The Tribunal must therefore dismiss this ground of appeal.

### ***Whether special reduction***

30. HMRC's review conclusion was that there were no special circumstances to merit special reduction. The legislation does not define 'special circumstances' under para 11 of Sch 24 FA 2007. From case law, it is accepted that for circumstances to be special they must be

‘exceptional, abnormal or unusual’ (*Crabtree v Hinchcliffe* [1971] 3 All ER 967), or ‘something out of the ordinary run of events’ (*Clarks of Hove Ltd v Bakers’ Union* [1979] 1 All ER 152).

31. In order to apply special reduction, the Tribunal must be satisfied that the decision of HMRC not to allow a special reduction was ‘flawed’ in the judicial review sense. In other words, that HMRC’s decision failed to take into account all relevant factors, took into account irrelevant factors, was wrong in law or was outside the bounds of reasonableness. We are not satisfied on the evidence before us that HMRC’s decision was flawed in that sense.

32. We note that HMRC have given the maximum reduction for Telling, Helping, and Giving, by taking into account any relevant circumstances for mitigation. Furthermore, we are of the view that HMRC’s review conclusion was thorough, and has addressed special reduction by taking into account relevant factors.

### **Conclusion**

33. For the reasons stated, the appeal is dismissed.

34. The penalties assessed pursuant to Schedule 24 FA 2007 in the total sum of £3, 412.56 are confirmed in full.

### **Right to appeal**

35. 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.

**HEIDI POON  
TRIBUNAL JUDGE**

**Release Date: 3 August 2023**