TC02661

Appeal number: TC/2009/11618

Appeal against amendment to Appellants tax return for 2003-04 and assessments for 1998-99 to 2002-03 and 2006-07 including penalties – property business and gardening business – deduction claimed for capital repayments in property business – accepted as incorrect but Appellant not negligent and not liable for penalties to that extent – garden business showed cash deficit – could this be explained otherwise than by reference to under declarations of income – Appellant's explanations allowed in part – in part Appellant failed to discharge this conclusion – presumption of continuance for previous and later years accepted but on the basis of reduced under declaration – Appellant failed to keep adequate records and was negligent and Respondent's method of calculating penalties accepted – Appeal allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

GRAHAM CARTER **Appellant**

- and -

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

TRIBUNAL: JUDGE JUDITH POWELL
KAMAL HOSSAIN FCA FCIB

Sitting in public at Bedford Square on 25 September 2009 with submissions made in writing afterwards

Mr Silvein Pinto, accountant for the Appellant

Mr Peter Massey, local compliance and reviews higher officer, for the Respondents

APPEAL

1. This appeal concerns an amendment to the Appellant's tax return for 2003-04, assessments for each of the years 1998-99 to 2002-03 and 2004-05 to 2006-07 inclusive (issued on 13 March 2009) and a notice determining penalties issued on 28 April 2009 affecting years 1998-99 to 2006-07 inclusive. The assessments, amendment and penalty determination are the subject of this appeal. We heard evidence from the Appellant who attended the hearing and from Mr Neil Braithwaite who also attended. Mr Braithwaite is the officer with HM Revenue and Customs who conducted the enquiry into the Appellant's tax affairs which led to the assessments, amendment and penalty determination being issued. A number of bundles were produced at the hearing. These included a copy of a meeting note relating to a meeting held in November 2007 between Mr Braithwaite and Mr Thomas of HMRC, the Appellant and the Appellant's then accountant Mr Barnett but although that note was signed by Mr Thomas it was not signed by anyone else and so we cannot assume that the matters it records are agreed by the Appellant or by his then accountant. There was also a copy of a second note (this time not signed at all) relating to a second meeting on 10 September 2008 between Mr Braithwaite, another officer of HMRC, Mr Mumford, and Mr Carter who did not bring anyone with him on that occasion. We read these by way of background and in the context of the oral evidence we heard. The Appellant had not instructed Mr Pinto's firm to prepare his 2003-04 tax return and did not engage that firm until after the enquiry had been opened and the assessments had been issued and no one from that firm attended the meetings between the Appellant and Mr Braithwaite and his colleagues.

2. The Respondents rely on the authority of *Blyth v Birmingham Waterworks* [1843-60] All ER Rep 478 in relation to the meaning of negligence. They also refer to *Jonas v Bamford* [1973] STC 519 in relation to the presumption of continuity.

Background

3. The Appellant has been self-employed, trading as Cann Hall Garden Centre since the tax year 1993-94. He also owns a number of properties from which he receives rental income. His tax return for 2003-04 incorporated the business accounts for the garden centre for the year ended 31 March 2004 and his rental accounts for the year ended 5 April 2004. Mr Braithwaite conducted an enquiry into this return under section 9A Taxes Management Act 1970. The outcome of this enquiry led Mr Braithwaite to amend the 2003-04 return and, on the presumption that the same situation had occurred in earlier and later years, to seek further documentation for those years. In the absence of documentation that he considered satisfactory, Mr Braithwaite made assessments for the other years mentioned above, and because he considered that Mr Carter had been negligent in several respects he determined penalties for the same years as well as for 2003-04.

4. There were three areas in which Mr Braithwaite found the Appellant's tax return for 2003-04 unsatisfactory and his conclusions were that the same situation had existed in earlier and later years. First, in the Appellant's rental income accounts, he claimed a deduction for the total amounts paid to his lender rather than just the interest element. Secondly, the property loans included a portion of £25,000 which related to Mr Carter's private residence purchase and the related interest payments were not deductible in calculating his taxable rental income and thirdly Mr Carter's business accounts (which described cash receipts and cash expenditure) showed a deficiency in cash of at least £11,336 for 2003-04 which Mr Braithwaite considered must have been attributable to unrecorded sales income since it was otherwise unclear how the excess of cash expenditure over receipts could have been funded. He based the amendment to the 2003-04 return and the assessments for the other years on these findings and his presumption that the same situation existed in those years. The Appellant appeals against the assessments and the penalties. He accepts there was an error on the 2003-04 tax return where capital repayments were claimed as deductions in calculating the taxable rental income and that errors occurred in other returns but in one year (1999-00) the error was in favour of the Respondents. He accepts there was a cash deficiency in 2003-04 but says this arose as a result of two large expenditures relating to a holiday and a car purchase and he can demonstrate how it was financed.

5. Upon hearing evidence at the hearing the Respondents withdrew their contention that some of the loan related to the Appellant's main residence purchase rather than being wholly and exclusively for the purpose of the property rental business and so that point will not be discussed further.

Facts

6. We heard oral evidence from the Appellant and from Mr Braithwaite. From this we conclude the following:

Property income

7. By 2002-03 Mr Carter owned five properties and had borrowed from several lenders. He felt this was inefficient and during that tax year he consolidated the loans. There was some misunderstanding between him and the officer at HMRC about how this was done and there is now no dispute about the interest deduction which was claimed nor that the loan related wholly and exclusively to the property rental business. At the hearing and in the submissions made afterwards by Mr Massey it was accepted that the calculations originally made by the Respondents will have to be revisited and we can make no findings of fact about the amount of the taxable income from that business that should have been declared for the earlier years. As a matter of principle it is clear that deductions for capital repayments had been wrongly claimed in calculating the business rental income and the Appellant accepted this. The Appellant says that this mistake resulted from incorrect advice given to him by his accountant and that he was not negligent. This is a matter of dispute between him and the Respondents

8. The reason for the error in claiming capital repayments as a deduction from the rental income in arriving at the taxable amount is relevant to the penalty determination. We were not able to hear from the accountant who prepared the relevant returns but we were able to see some limited correspondence from the firm to HMRC after the enquiry was opened – much of this was from 2006. The Appellant says the error was the fault of the accountant acting at the time, a Mr Barnett who should have known that it was incorrect to make the deduction for capital repayments. It was not disputed that Mr Barnett went with the Appellant to the meeting with Mr Braithwaite on 14 August 2007. Prior to that meeting we can see from correspondence that Mr Braithwaite had asked Mr Barnett several times for interest certificates who told him in correspondence they were with the property rental papers and did not produce them. Eventually the Appellant himself produced interest certificates to Mr Braithwaite direct and these revealed that an excessive deduction had been claimed in several years. The meeting notes did not record whether or not the accountants were asked if they had seen these certificates in the context of preparing the relevant returns but if they had not seen them it is curious they wrote to Mr Braithwaite on several occasions saying that the certificates were with the papers. This suggests at the very least that they would have expected to see the certificates when preparing the returns. It seems that the Appellant himself prepared rental income statements and that he prepared them on the principle that capital repayments were deductible in calculating the rental income. We conclude that it is likely there was an error on the part of the accountant – either that they accepted without question the figures that Mr Carter had given them with the property rental income statements or that they had seen the interest certificates and ignored them in preparing the returns. We were surprised that Mr Braithwaite did not question Mr Barnett in more detail about this when he had the opportunity to do so since the reason for the error is plainly important.

The garden centre business

9. The garden centre business was small, it was off the main road and did not attract passing trade. The Appellant sold shrubs, plants and trees but because there was no passing trade to support a retail business he took on garden work and miscellaneous odd jobs and although he had advertised for business most of his work came through word of mouth. He charged between £10 and £12 per hour for garden work and had no employees although he might get someone to help him with work requiring specific expertise. We accept that most of the Appellant's receipts were in cash and that he also received cheques which he paid into his Barclays bank account. The cash was kept in a till, some of it was banked and the remainder was kept to pay bills and other cash payments. The Appellant accepted that he has to provide an explanation why his apparent cash receipts are less than his stated cash expenditure for the year and he suggested a number of reasons for this. The records maintained by him were not helpful in showing a picture of his business income and expenditure. It was agreed that the deduction he claimed for his home BT bill would need to be apportioned between business and home use.

10. The daily takings of the garden centre business were shown on Z readings on the till and these were transferred to a piece of paper by the Appellant. The

Appellant was unable to produce these or any other prime records. The income from the business was shown on a schedule prepared by the Appellant from these jottings. It was not clear what had happened to the original Z readings and it is likely they no longer exist. The Appellant says he sent the till rolls to Mr Barnett with other papers; at the 2007 meeting he said he did not keep any of his records but we accept he was confused about what he did or did not keep and that he may have kept these till rolls and passed them to the accountant. We accept that what he meant to say was that he did not keep a record of individual sales. We accept that the accountants were not forthcoming when asked to produce records – this is evident from the 2006 correspondence. We believe the readings are unlikely to be produced at this stage even if they still exist. Mr Braithwaite felt the income was not shown in full since when he carried out a cash test he came up with a cash deficit. In the absence of any other explanation he concluded that the deficit was caused because takings had not been declared in full. We accept that the Appellant did not maintain satisfactory business records even if we take into account what we believe was sent to the accountants in the form of till rolls.

11. The Appellant offered several explanations why he was able to fund the cash expenditure even though it exceeded his cash receipts. We found some parts of his evidence far less convincing than others. We concluded that his records were not maintained in a business like way. We also concluded that he failed to understand the significance of some of the questions put to him at his meetings with Mr Braithwaite and this partly explains why he failed to offer the explanation for the cash payments that was put to us at the time of the hearing.

12. He told us that the cash analysis failed to take into account cash in hand carried forward to the 2003-04 year from earlier years and which would have been available to fund current year expenditure. He explained that this cash had originated from, and was built up as a result of, surpluses in earlier years. In order to demonstrate the effect of this Mr Barnett had produced figures starting with an opening balance for 1999-2000 of £2000 (and a closing balance of £12,410.87). Unfortunately the Appellant's explanation of what cash he kept in hand was muddled and imprecise. The note prepared by the Respondents of the 2007 meeting recorded the Appellant as saying he kept cash of a maximum amount of £2,000 at his premises. At the hearing the Appellant revised his estimate. We accept that the Appellant may have been nervous and confused at the meeting and that his estimate at the time was based on current rather than historic practice. His estimates of cash in hand were vague and with reference to a wide range – for example in the meeting he gave estimates of between £200 and £2,000 and at the hearing his estimates ranged between £7,000 and £10,000. He told us about burglaries in which cash had been stolen and that these events caused him to change his approach to keeping cash at the business premises. He had not reported these burglaries to the police which we found surprising. We cannot conclude anything about the amount of cash in hand held at the beginning of the year in question except that the Appellant is unable to recall how much he kept from time to time. This does not assist in any meaningful way his argument that he carried forward a cash sum from earlier years with which he financed some of the expenditure. He may have done but the amount is uncertain and

cannot be used as a basis for explaining the amount of the cash to be shown as an opening balance for the year in question.

13. The Appellant explained why various credit card payments cannot be accounted for by payments from his bank accounts and only some can be reconciled with the cash account. By way of explanation the Appellant told us that he paid for a holiday by credit card, that the payment related to a number of people all going together and that the others reimbursed him for their share. He told us that this reimbursement amounts to £2400 which he received in cash. We considered the submissions of the Respondents that it was unlikely that the Appellant had been reimbursed in cash for amounts such as these think but concluded it was likely that the Appellant was reimbursed in cash by the others and accepted what he said about this.

14. The Appellant told us he had additional cash available to him because he had received a cash repayment of an earlier loan made by him to a Mr Burnett. The Appellant explained that he was one of a group of individuals were in the habit of making loans to each other to assist with cash flow difficulties. As an example of this and also to explain how he came to have additional cash available to him in 2003-04, Mr Carter told us about a loan he had made to a member of this group, a Mr Burnett. It was not disputed by the Respondents that the Appellant lent money to Mr Burnett and the payments made by the Appellant can be traced through his bank account. The loan was in the amount of £12,000 and was both made and, the Appellant says, repaid in full in 2003-04. The Appellant told us that £10,000 of the repayment was paid into his bank account (and this can be seen from an entry on the bank statement for August 2003) but he says the balance of £2000 was repaid in cash and retained by the Appellant giving him further cash resources. This would explain how the Appellant had some cash in hand to meet expenses and we accepted what he said about this.

15. The loan to Mr Burnett is a single transaction and is only the slightest support for the Appellant's contention that there was a general pattern of cash lending generally within this group of friends. It does not adequately support his explanation that he had further cash available to him because of a cash loan made to him by Mr Hill. The loan to Mr Burnett and the repayment by him were, apart from the £2000 repayment made in cash, funded by way of payments from or into Mr Carter's bank account. The loan from Mr Hill was said to have been by the Appellant to have been made in cash.

16. The Appellant told us that Mr Hill was not only a personal friend but also ran a glass business of which the Appellant was a customer. It is unfortunate that Mr Hill has died and was not able to give evidence. A letter was produced which was written in 2009, signed by "J Hill", on notepaper for a business that had by then ceased trading. This letter referred in general terms to money provided to "Graham" in 2002 and 2003 amounting to £11,500 and in 2004 to £9,000. These are very significant amounts to have been lent in cash even if the loans were made in small amounts over the year. It is curious that the Appellant borrowed money at around the same time as he lent money to Mr Burnett. The letter does not mention whether the loans were repaid and given the letter was written in 2009 it is surprising nothing is said about

whether the monies said to have been lent some five years previously had been repaid in whole or in part. The totals are significant even if the first loans (2002 and 2003) had been repaid by the time of the loan in 2004. We were told that the loans had been repaid before Mr Hill died in 2009 but were not shown any evidence of this. The amounts involved are such that it is unusual if there was no contemporaneous record of them if only to cover the situation if the Appellant had died before repayment although we accept that there was no formal record of the terms of the loan the Appellant made to Mr Burnett which was also of a significant amount. We were less surprised the loan was only mentioned for the first time some considerable time after the 2007 meeting; we can accept that Mr Carter, who did not strike us a particularly sophisticated in financial matters, might not have recognised the significance of a cash loan when he was being asked about the business receipts and he may have been daunted by the nature of the enquiries, but he was specifically asked if he had any other receipts and said he had not. Taking all this into account we took no account of the money said to have been lent to the Appellant by Mr Hill in reaching our conclusions; he did not make out his case about this.

17. Mr Braithwaite was the person responsible for opening the enquiry into the Appellant's affairs and when he examined such records as were available for the business he felt that the Appellant had not fully disclosed his income and when he carried out a cash test comparing cash receipts with cash expenditure it revealed a cash deficiency which without further explanation about how it was funded leads to the conclusion that the cash receipts must have been greater than was declared. We accept he was unable to corroborate the daily takings with any prime records since the Z readings were not available. He had examined the credit card payments and the bank records and had taken them into account. He ignored the possibility that the Appellant had drawn cash for his own use but observed that if he had done so the shortfall would have been greater. He had asked whether the Appellant had other cash sources and was told he had not; we have already said we think the Appellant may have been confused by the question but we accept that Mr Braithwaite did not appreciate that at the time. We accept his reason for not taking into account the possibility of cash in hand at the beginning of the year – there was no balance sheet and the Appellant's account of holding £200 to £2000 in hand at any time led to the reasonable conclusion that this was carried forward from year to year and had a neutral effect. Despite requests Mr Braithwaite did not receive any business records although he did receive some spread sheets which were of limited use. He explained to us how he had prepared the assessments for the years in question. He found the additions for 2003-04 and based his assessment for 2003-04 on these. He then applied the RPI to this figure for the previous and following years and based his assessments for those years on the resulting amount. He presumed that the shortfall was similar in those years. As far as the penalties were concerned he proceeded on the basis that the information had to be prompted and the disclosure was not prompt or adequate. The information was provided late and then only after the issue of formal notices. There were errors for both businesses leading to a large under declaration. This led to assessments being raised for a number of years.

Submissions

18. We received written submissions from the Respondents after the hearing since it was agreed at the hearing this was the most efficient way of dealing with the matter. We gave the Appellant the opportunity to make additional representations why the cash account for 1999-2000 did not correlate to the declared turnover for that year. We deal with these below.

19. The Appellant accepted in relation to the property business that his claim to deduct capital repayments in calculating his taxable rental income was incorrect but that he was not negligent in doing that because he relied upon his accountant and so he was not liable to a penalty. The Respondents say that the accountant was not present to give evidence and it is not clear what role they accepted in preparing the returns. They also note that the Appellant said he did not check the figures before signing the return. They say it is unlikely that a professional person such as an accountant would make such a fundamental mistake as claiming the capital element of loan repayments in a calculation of taxable rental income. They submit that the extent of the accountant's involvement was in transcribing figures from a schedule prepared by the Appellant onto his tax return. They say the Appellant was negligent and liable to a penalty.

20. The Appellant's submission in relation to the gardening business was that there was no under declaration of profit but that the apparent shortfall of cash could be explained in a number of ways. We have set out his explanation in the preceding paragraphs. In brief he submitted that he had cash carried forward from earlier years, he had borrowed cash from Mr Hill and had accepted some cash in repayment of his loan to Mr Burnett and that his family had repaid him in cash for money he had paid on their behalf through his credit card for a holiday. Mr Pinto said that even if the loan from Mr Hill was ignored the apparent cash shortfall could be explained by the carried forward cash from earlier years, the repayment from Mr Burnett and the cash paid to the Appellant by his family.

21. The additional representations made on behalf of the Appellant after the hearing sought to address the discrepancies in the 1999-2000 tax year which is the base year for demonstrating the cash surpluses said to have arisen in earlier years. Unfortunately they failed to do so. They merely provided information that had been included in papers before the Tribunal at the hearing as well as making the suggestion that Mr Carter had provided cash injections into the business – a suggestion that is at apparent odds with the argument that in that year the business was carrying surplus cash already.

22. There was a further unhelpful submission about the sales summaries matching the returns in later years but this does not advance his case. It is unsurprising if the figures on his return match his sales summaries – what is missing is the Z records which would form the prime evidence of the sales and thus whether what was transcribed onto the summaries was accurate. The Respondents submit that nothing in the cash accounts prepared by Mr Pinto to show that cash was carried forward to the 2003-04 year is reliable and the figures are purely hypothetical based on an assumed original opening balance for 1999-2000.

23. They say that it was improbable there had been a cash reimbursement from family for the holiday – partly because Mr Carter had appeared not to recollect the fact of the holiday during the enquiry and partly because it was unlikely, they say, that the family would have reimbursed such large amounts in cash and no family member came forward to corroborate what had happened.

24. They submitted that there was no evidence of the alleged loans from Mr Hill (other than the letter from 2009) and the fact of it having been made was only first mentioned late in the enquiry. They also say that there are many unsatisfactory elements to it – the lack of formality, the absence of real information about Mr Hill and the fact the 2009 letter was written on notepaper belonging to a company that then did not exist. The alleged loan was also inconsistent with the explanation of cash reserves held in the business which, if correct, make it unlikely a loan was needed and the amounts borrowed seemed out of proportion with the needs of the business.

25. They say that the burden of proof is on the Appellant to show he has been overcharged by the assessments and he has not discharged that burden. They accept the calculation of omitted sales for other years requires some estimation but this was unavoidable and that this approach is supported by what Walton J said in Johnson v Scott that inferences are sometimes unavoidable and that HMRC has to make reasonable inferences that are fair.

26. They say in relation to the penalties that the Appellant was negligent in his declaration of profit of the gardening business. In considering whether the penalty (which could be equal to the tax underpaid) should be abated Mr Braithwaite explained that he applied an abatement of 60%. This was made up of 10% for disclosure (compared with a maximum of 30%) 20% for co-operation (maximum abatement 40%) and 30% for seriousness (maximum 40%). In his view the least deserving element was the disclosure element since this was prompted and documents were only forthcoming after repeated requests and formal demands.

Our decision

27. The Appellant accepted that his claim to deduct capital repayments in calculating his taxable rental income was incorrect. The only question for us is whether he is liable for penalties in relation to this on the basis he was negligent as the Respondents say he was or whether he was not on the basis, as he alleges, that he relied upon his accountants to advise him which they failed to do. We listened carefully to the arguments. We did not hear from the accountants who were responsible for the returns. On the other hand the note of the meeting with Mr Braithwaite which the accountant did attend was not helpful in establishing what duties the accountant had promised to undertake. The correspondence with the accountants implied that they had the interest certificates and we know the Appellant had to obtain duplicates to send to Mr Braithwaite. On the basis the accountants said in correspondence that the interest certificates should be amongst the papers with HMRC we believe that they must have expected to have seen then whilst preparing the return. If they had looked at the certificates they would have realised that the

schedules prepared by the Appellant had been prepared on the basis of a deduction for capital repayments as well as interest and they should have advised him that capital repayments were not an allowable deduction.

28. The Respondents say that the accountants could not have made such an elementary mistake but equally if the accountants had or expected to have the interest certificates when preparing the return it would be at the very lowest level of care to expect them to check that the deductions corresponded with the amounts on those certificates and correct or question a deduction for more than this in connection with loan repayments.

29. Accordingly we conclude that the Appellant was not negligent and was entitled to rely on the accountants for what was for them an elementary task of checking the deductions claimed corresponded to the amounts shown on the interest certificates. The Respondents say the Appellant should have checked the figures before signing the return. We do not see how that would have assisted. He plainly thought it was correct to deduct capital repayments and even if he had checked the figures he would not have understood they were wrong because he was mistaken about the principles involved.

30. The return of the garden centre income raises more complex issues and the Accountant may well not have assumed full responsibility for the return of this income. We are surprised if the Z readings were not sent to them but even if they were sent to them (which we incline to believe is the case) they are now lost. Given what we have found about the interest certificates and their apparent failure to cross check the figures we conclude they probably did not check that the Z readings corresponded with the figures given to them by the Appellant and which he says were jotted down by him from those readings.

31. It was apparent to us at the hearing that the Appellant was not sophisticated in his understanding of tax matters and did not keep good records for his business. We concluded that he did not obtain useful assistance from his accountants. We accept this may have been because he only gave them a limited scope of responsibility. We have already concluded that he was entitled to rely on the very basic task of checking that his deductions corresponded with the interest certificates but the task of checking and advising on his business income went beyond that and they may not have assumed responsibility for that.

32. We agree with the Respondents that the task of explaining the apparent cash deficit apparent from the Appellant's records falls onto the Appellant. We were not satisfied that his explanation of the loan from Mr Hill explained this shortfall. Mr Pinto's schedules showing cash carried forward to the 2003-04 year (the basis for the original enquiry) did not do so either. We accept the Respondents' submissions about this. We did not gain the impression that the Appellant's recollection of past events was very clear although it was triggered more clearly when he was shown documents such as credit card entries and so on.

33. We accept the Appellant was nervous when he met Mr Braithwaite and we understand he may not have understood the significance of some of the questions. However the loan said to have been made by Mr Hill was just not made out with sufficient clarity as to be acceptable in showing where he obtained cash to meet expenditure if his declared income was correct. We did accept that the loan the Appellant made to Mr Burnett was partly repaid in cash which would explain that he had £2,000 of cash in hand in the relevant year. We also accept that the family repaid him in cash for the money he paid on their behalf for a holiday and this would explain that he had £2400 of additional cash available to him. This does not explain the entire shortfall but does reduce the amount.

34. We find the Appellant put forward an explanation which we accept for a part of the apparent deficit and this reduces the under declaration of income by the same amount for 2003-04. There remains no explanation for the balance and we agree that he has failed to discharge the burden of explaining this and cannot, to that extent, complain of or resist that part of the assessments. We agree with the Respondents about their conclusions on the same issue in the other years and we have no observations to make about the method adopted for raising assessments for other years except to say that they should be recalculated on the basis of the reduced shortfall for 2003-04.

35. Mr Massey asked in his submissions that we should give a decision in principle about the garden centre profits so that the Respondents could agree calculations. We hope that the findings in the previous paragraph allows them to do this.

36. He also asked for a decision in principle on the question whether the Appellant was negligent first in the returns of his income from the property business and we say he was not and secondly in relation to the return of his income from the garden centre business where we find that he was.

37. The finding of negligence in relation to the garden centre business means that we have to consider the penalty and although Mr Massey in his submissions suggested we might wish to have details of the under declared tax before making a decision on that we feel we can do so in principle in this decision. Our conclusion is that the maximum penalty should be subject to an abatement of 85% allowing 20% for disclosure, 30% for co-operation and 35% for seriousness. We draw this conclusion because we formed the view the Appellant was disorganised and simply failed to discharge the burden of showing us how he financed the apparent cash shortfall. This is negligent but should be recognised for what it is in establishing the correct penalty particularly since his disorganisation will lead to adverse consequences for other years. We also took into account that his accountant did not assist him in production of paperwork and we believe that his difficulties in producing such documents as he did have was hampered by their attitude which we can see from the correspondence and that whilst he was slow in dealing with matters this was part of the reason. His representatives at the hearing were obviously trying to establish what had happened without the benefit of being involved at the time but it was simply too long after the event to be helpful; there may well have been surplus cash carried

forward but we conclude that whether and to what extent this was so is now unlikely to be made out with sufficient clarity to assist his case.

38. 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.

JUDITH POWELL
TRIBUNAL JUDGE

RELEASE DATE: 18 April 2013